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A

SELECTION

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PRECEDENTS,

FROM

THE BEST MODERN MANUSCRIPT COLLECTIONS,

AND

Drafts of Actual Practice;

WITH

GENERAL COMMON FORMS, AND VARIATIONS,

ADAPTED TO ALL THE CIRCUMSTANCES USUALLY OCCURRING;

FORMING A

SYSTEM OF CONVEYANCING;

WITH

DISSERTATIONS, AND PRACTICAL NOTES.

IN CONTINUATION OF THE WORK

BY THE LATE

W. M. BYTHEWOOD,

OF LINCOLN'S INN, ESQ. BARRISTER AT LAW.

BY

WILLIAM PALMER PARKEN, OF THE INNER TEMPLE, ESQ.

AND

JAMES STEWART, OF LINCOLN'S INN, ESQ.

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PURCHASE DEEDS (*continued*) ..... BY Mr. STEWART.

RECOVERY DEEDS ..... BY Mr. STEWART.

RELEASES ..... BY Mr. PARKEN.

SEPARATION DEEDS ..... BY Mr. PARKEN.

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Marriage Settlement of two Sums of Stock, the one belonging to Lady, the other to Gentleman, the Sums being vested in Trustees, upon Trust to invest and vary the Securities, and stand possessed thereof, upon Trust to pay the Dividends to Gentleman for his Life, and after his Decease to Lady, and after the Decease of the Survivor, to the Children, in the usual Manner, and with the usual Provisions; And if there shall be no Children, a Moiety of the Trust Monies to be in Trust for Gentleman, and the other Moiety upon such Trusts as Lady shall appoint; and in Default of Appointment, to her absolutely, with Variations for one of the Parties agreeing to purchase Stock. 579

Of estate for life in remainder, residuary personal estate, and executory interests and expectancies.

Marriage Settlement of a Life Estate in Remainder, and Residuary and Personal Estate of Lady, under Will of her former Husband; and Executory Interests, and Expectancies under the will of her Uncle; whereby the Life Estate in Remainder is conveyed to the Use of Lady until the Marriage, and after the Marriage, to Trustees, upon Trust to pay Rents to Separate Use of Lady; and whereby the Personalty and Executory Interests are vested in the same Trustees, Upon Trust to receive the same, and when received to invest and vary; and as to Part of the Trust Monies, Upon Trusts for the Separate Use of Lady; and after her Decease, to the Children of the Marriage, as she shall appoint, and in Default of Appointment, to all equally; and in Default of Issue, Upon Trusts for the Benefit of Lady: Provisions for Hotchpot, for the

Maintenance and Advancement of the Children, and Accumulation of the Residue of their Shares; and as to the other Part, Upon Trust to pay the Interest thereof to Gentleman for his Life, and to Lady for her Life, if she survives him, and then as to the Principal Sum, in Trust for the Benefit of the Children, in the same manner as before declared, respecting the firstly settled Monies: Proviso that Double Advancement may be made; and if no Children, upon Special Trusts; Power to convert and reconvert as to the firstly and secondly settled Monies; Covenant by Gentleman and Lady, that they will Settle any Real Estate which may be given or come to Lady during the Marriage, to the use of Herself and the Children of the Marriage; Covenant by Gentleman and Lady that they will vest in Trustees any Personal Estate which may be given or come to Lady during the Marriage, Upon Trusts for the Benefit of Herself and the Children of the Marriage. Usual Clauses. Page 583

PURCHASE DEEDS.

(*Continued.*)

Assignment (*a*) *of* Leaseholds.

ASSIGNMENT OF LEASEHOLDS.

THIS INDENTURE, made the day of , Between [*vendor*] of, &c. of the one (*b*) part, and [*purchaser*] of, &c. of the other part. Whereas, by an indenture of lease bearing date on or about the day of , and made, or expressed to be made, between

Parties.

Recital of lease, whereby messuages are demised to lessee.

(*a*) ASSIGNMENTS.

An assignment may be defined to be the transfer or making over to another the whole interest which one has in any chattels * real, or personal estate. Its operation was formerly chiefly confined to the transfer of a term of years; but now, as almost every species of property may be transferred, either at law or in equity, this assurance is much more extensively employed.

Definition.

The proper operative words of an assignment are, "assign, transfer, and set over;" but any other words which shew the intention of the parties, will have the same effect.

Operative words.

It is most commonly employed for the transfer of leaseholds, and here the whole interest must of course be transferred; and if the assignor reserve a rent to himself, it was thought that this was not an

Leaseholds.

(*b*) Or if the lessor's assent is necessary, he should be made a party of the second part.

Lessor's assent.

* Mr. Justice Blackstone has called it a transfer "of the right one has in *any estate*," 2 Bl. Com. 326; but it is certainly inapplicable to the transfer of freehold property. Mr. Cruise defines it to be "a transfer of some *particular* estate or interest in lands." 4 Cru. Dig. 97. 3d edit.

ASSIGNMENT OF LEASEHOLDS.

[*lessor*] of the one part, and [*lessee*] of the other part; the said [*lessor*] did, for the consideration therein mentioned, demise and lease unto the said [*lessee*], his executors, administrators, or assigns, ALL THAT the messuage or dwelling-house and premises hereinafter described, and intended to be hereby assigned, with the appurtenances, TO HOLD the same unto the said [*lessee*], his executors,

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assignment, but an underlease. *Poulteney* v. *Holmes*, 1 Stra. 405. *Palmer* v. *Edwards*, Doug. 187, n. But in a later case, where the lessee of two farms agreed with A. that he should have them during the leases for the same, A. to remain tenant of the lessee during the leases, and at the leaving of the farms, A. was to be paid for the fallows and the dung. A. took possession and paid one year's rent growing due after the date of the agreement, to the lessee, who afterwards distrained for rent in arrear. But it was held that this distress could not be supported, as the agreement operated as an absolute assignment of all the lessee's interest in the farms. *Parmenter* v. *Webber*, 8 Taunt. 593. 2 J. B. Moo. 656, S. C. So that now it may be laid down, that the reservation of a rent does not prevent the transaction being an assignment.

Contingent interests.

An assignment is also properly employed in the transfer of contingent interests in freehold lands, which may be supported in equity although invalid at common law. Fearne Ex. Dev. 527. But a right of entry cannot be transferred. Co. Lit. 214 a. *Marquis of Winchester's* case, 3 Co. 2 b.

Choses in action.

It is now fully settled, that *choses in action* may be assigned in equity. *Lord Carteret* v. *Paschal*, 3 Peere Wms. 199. But the assignee of a *chose in action* takes subject to the same equity to which the assignor was liable. *Priddy* v. *Rose*, 3 Meriv. 107. Thus bonds, legacies, sums of money, book and other debts, are continually assigned; but it is still necessary to sue for them in the name of the assignor.

Canal shares.

Canal shares are frequently declared to be personal estate by the act for making the canal, and the form of transfer is given in the act. It is usually enacted, that this form shall be always used for their transfer, and it is often exempted from stamp duty. The transfer should be registered in the books of the company; and no other form will in general be allowed to be registered.

New river share.

A new river share is real estate. This was decided by the case of *Buckeridge* v. *Ingram*, 2 Ves. jun. 652, where the Master of the Rolls said, that he had no difficulty in saying, that wherever a perpetual inheritance is granted which arises out of lands, or is in any degree

administrators, and assigns, from the day of the date of the said indenture, for and during the term of years, at or under the yearly rent of pounds, payable quarterly, as in the same indenture is mentioned, and under and subject to the covenants, conditions, and agreements in the same indenture contained, on the part of the said [*lessee*], his executors, administrators, or assigns, to be observed and performed: AND WHEREAS, by an indenture of assignment bearing date on or about the day of , and made, &c. between the said [*lessee*] of the one part, and the said [*vendor*] of the other part, the said messuage or dwelling-house and premises hereinafter described, and intended to be hereby assigned, and so comprised in and demised by the said hereinbefore recited indenture of the day of , as aforesaid, and their appurtenances, were (for the considerations in the said indenture now in recital mentioned) assigned by the said [*lessee*] to to the said [*vendor*], his executors, administrators, and assigns, for and during the then residue and remainder of the said term of years created therein as aforesaid, at, under, and subject to the rent, covenants, and agreements in the said indenture of lease respectively reserved and contained, on the tenants' or lessees' part to be paid, observed, and performed: AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute sale to him of the said messuage or dwelling-house and premises hereinafter described, and in-

ASSIGNMENT OF LEASEHOLDS.

Assignment by lessee to vendor.

Agreement for purchase;

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connected with, or, as it is emphatically expressed by Lord Coke, exercisable within it, it is that sort of property the law denominates real, p. 664. It seems, therefore, that in the absence of any declaration to the contrary, canal shares must also be considered as real estate.

Some assignable interests are assigned most completely, not by a formal assignment, but by a deed of covenant by the vendor to do all in his power to confer the benefit of the thing assigned to the purchaser, and a bond for securing the performance of the covenant. This mode has been adopted as to fees of office, *post*, 13. And for a form of such an assignment of a goodwill of a trade, see 1 Byth. 172, Stewart's edit.

Good-will of trade.

Fees of office, good-will of trade.

ASSIGNMENT OF LEASEHOLDS.

tended to be hereby assigned, with their appurtenances, for the residue and remainder of the said term of years created therein as aforesaid, free from incumbrances,

testatum;

at or for the price or sum of pounds. Now THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration

consideration;

of (*consideration and receipt, as ante*, Vol. VI. p. 256), HE the said [*vendor*], *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, ALL, &c. [*parcels*], *And* all the

habendum to purchaser for the residue of the term;

estate, &c. TO HAVE AND TO HOLD the said messuage or dwelling-house, and all and singular (*a*) other the premises hereby assigned, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, from thenceforth for and during all the residue and remainder which is

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Fixtures.

(*a*) In the absence of any express stipulation, common fixtures will pass to a purchaser, *Colegrave* v. *Santos Dios*, 2 B. & C. 76.

Lessor's assent.

If the lessor's assent is necessary, introduce the following recital in this place:

"AND WHEREAS the said [*lessor*] hath given his assent to the said assignment of the said messuage and premises to the said [*assignee*], as he the said [*lessor*] doth hereby admit and acknowledge."

It is a well-known principle, that if a license of this nature is once given, it is gone for ever. See *Dumpor's* case, 4 Co. 119. It is common, therefore, on an assignment of leaseholds, either to take a fresh lease from the lessor, and have the clause restricting assignment reinserted therein, or to take an assignment in the above form, and then to make the purchaser, by a separate deed, execute a defeazance reviving the condition of the lease, and covenanting with the lessor to pay the rent and perform the covenants. See a form of this nature, title DEFEAZANCE, and note there on the point; and see 1 Byth. 165; and also a form of such a defeazance, 1 Byth. 282. Stewart's edit.

If the rent is to be apportioned, a separate deed for that purpose had better be employed. See the form, 3 Byth. 561.

ASSIGNMENT OF LEASEHOLDS.

now to come, and unexpired, of the said term of years created therein as aforesaid, at, under, and subject to the payment of the rent, and to the observance and performance of the covenants, conditions, and agreements, in and by the said recited indenture of lease reserved and contained, and which from henceforth, on the tenants' or lessees' part, ought to be paid, observed, and performed; *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, that for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said [*vendor*] made, done, committed, executed, or knowingly or willingly suffered to the contrary, the said hereinbefore recited indenture of lease is, at the time of the sealing and delivery of these presents, a good and effectual lease and demise in the law, and not forfeited, surrendered, assigned, or become void or voidable; *And that* the rents, covenants, conditions, and agreements therein reserved and contained, have, on the tenants' or lessees' part, been duly observed and performed, up to the day of ; *And* that for and notwithstanding any act, deed, matter, or thing as aforesaid, he the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority to assign and assure the said messuage or dwelling-house and premises hereby assigned, or intended so to be, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, during the continuance of the said term of years, in manner aforesaid, and according to the true intent and meaning of these presents; *And* that it shall and may be lawful for the said [*purchaser*], his executors, administrators, and assigns, during the continuance of the said term of years, from time to time, and at all times hereafter, peaceably and quietly to enter into, hold, occupy, possess, and enjoy the said messuage or dwelling-house and premises hereby assigned, or intended so to be, with their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, claim, demand, interrup-

covenants by vendor,

that the lease is good;

good right to assign;

for quiet enjoyment of purchaser;

ASSIGNMENT OF LEASEHOLDS.

tion, or eviction whatsoever, of or by him the said [*vendor*], or his executors, administrators or assigns, or of, from, or by any other person or persons whomsoever, lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him, them, or any of them, save and except the rents, covenants, conditions, and agreements in and by the said hereinbefore recited indenture of lease reserved and contained, and which on the tenant's or lessee's part are to be paid, observed, and performed;

free from incumbrances;

And that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*vendor*], his executors, administrators, and assigns, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, trusts, mortgages, leases, wills, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered by the said [*vendor*], or his executors or administrators, or by any other person or persons lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him, them, or any of them, during the continuance of the said term of years, or by his or their acts, means, de-

and for further assurance.

faults, or procurements: *And further*, that he the said [*vendor*], his executors or administrators, and all and every other person and persons having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, property, claim, or demand whatsoever, either at law or in equity, in, to, or out of the said messuage or dwelling-house and premises hereby assigned, or intended so to be, with their appurtenances, or any of them, or any part thereof, by, from, or under, or in trust for him the said [*vendor*], or his executors or administrators, shall and will, from time to time, and at all times here-

after, upon every reasonable request to be made for that purpose, and by and at the proper costs and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, and cause and procure to be made, done, and executed, all such further and other acts, deeds, things, assignments, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely assigning and assuring of the said messuage or dwelling-house and premises hereby assigned, or intended so to be, and every part thereof, and their appurtenances, unto and to the use of the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty, than against the person or persons who shall be required to make or execute the same, and his, her, or their heirs, executors, or administrators' acts and deeds, and so as the person or persons who shall be required to make such further assurance or assurances, be not compelled, nor compellable, for the making thereof, to go or travel from his, her, or their usual place or respective places of abode: *And* the said [*purchaser*] (*a*) *Doth* hereby, for himself, his executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*vendor*], his executors and administrators, that he the said [*purchaser*], his executors, administrators, and assigns, shall and will, at all times hereafter, well and truly pay and satisfy the yearly rent of pounds by the said recited indenture reserved, at such times and in such manner as the same is thereby

ASSIGNMENT OF LEASEHOLDS.

Covenant by purchaser to pay the rent, and perform covenants;

(*a*) Although there is no covenant, yet the law will imply an obligation in the assignee of a lease to indemnify the lessee from the covenants contained in it. See *Burnett* v. *Lynch*, 5 B. & C. 589. See however *Jones* v. *Hill*, 7 Taunt. 392. 1 J. B. Moo. 100, S. C.

Implied obligation to indemnify lessee.

This covenant is often taken by way of bond, in order to save the expense of a counterpart of the assignment.

Covenant often taken by way of bond.

ASSIGNMENT OF LEASEHOLDS.

made payable; and likewise shall and will observe and perform the several covenants and agreements therein contained, which on the part of the said [*vendor*], his executors or administrators, are respectively from henceforth to be paid, observed, and performed; *And* from time to time, and at all times, save harmless, and indemnify him the said [*vendor*], his heirs, executors, and administrators, from and against the same, and all costs, charges, damages, and expenses which may be incurred, by reason of any delay or default in payment or performance thereof. IN WITNESS, &c. (*a*)

and indemnify vendor therefrom.

Stamp.

(*a*) Assignments of any property not otherwise charged, nor expressly exempted from all stamp duty, are liable by the 55 Geo. III. c. 184. Sched. Part I. to a duty of - - - 1*l.* 15*s.*

And where the same, together with any schedule, receipt, or other matter indorsed thereon or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein over and above the first 1080 words, a further progressive duty of - - - - - 1*l.* 5*s.*

Part of the premises.

As to a judgment not being property within this act, see *post*, p. 18.

If part only of the premises are assigned, the form will be as above; but the assignee will covenant for the payment of a share of the rent, and to perform covenants that relate to the premises assigned to him, and indemnify vendor therefrom, as *ante*, Vol. VI. p. 88, 89.

Assignment *of a* Pew *in a* Chapel.

OF A PEW.

THIS INDENTURE, made, &c. Between [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. Whereas (*a*) the said [*vendor*] is possessed of or well entitled to the pew and premises hereinafter described, and intended to be hereby assigned, for and during the term of years; And whereas the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said pew and premises, for and during all the right and interest of the said [*vendor*] therein, free from incumbrances, at or for the price or sum of pounds. Now this indenture witnesseth, that in consideration (*consideration and receipt, as ante*, Vol. VI, p. 256), He the said [*vendor*] *Hath* bargained, sold, assigned, transferred and set over, *And* by these presents *Doth* bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, All that pew, situate and being on the (*right*) side of the (*middle*) aisle of the chapel called or known by the name of chapel, in the parish of , in the city of , and numbered , *Together* with all rights, privileges, commodities, and advantages thereto belonging: And all the estate, &c. To have and to hold the said pew and premises hereby assigned, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, for and during all the residue and remainder now to come and unexpired of the said term of years; *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the

Parties.

Possession of pew.

Contract for purchase.

Testatum, whereby vendor assigns to the purchaser;

parcels;

habendum to him and his executors for the residue of the term.

Covenant for title.

(*a*) In general the lease of the pew should be recited. *See ante*, p. 1.

OF A PEW.

said [*purchaser*], that &c. (*covenants for title, as ante*, p. 5, *altering the words* "messuage or tenement and premises" *into* "pew and premises"). IN WITNESS, &c.

OF A LEGACY.

ASSIGNMENT *of a* LEGACY (*a*) *to a* PURCHASER, *the Amount of the Testator's* DEBTS *not being precisely ascertained.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*legatee*] of, &c. of the first part; [*executor of will*] of, &c. of the second part; and [*purchaser*], of the third part.

Recital of will, whereby the legacy was bequeathed;

WHEREAS [*testator*] late of, &c. deceased, (and afterwards called [A. B.] the elder), duly made and published his last will and testament in writing, bearing date the day of , and thereby, after giving, devising, and bequeathing divers specific parts of his estates to the several purposes, and in the manner in his said will mentioned and expressed, gave and bequeathed unto his son, the said [*legatee*], party hereto (*b*), the sum of pounds of lawful money of Great Britain and Ireland, for his own absolute use and benefit; *And* the said [*testator*] by his said will appointed the said [*executor*] sole executor of his said will; AND WHEREAS the said [*testator*]

death of testator;

Legatee being abroad.

(*a*) If a legacy is payable to a person who is abroad, the proper mode is for him to assign it to some person here, in trust, to receive it for him, and to give a sufficient discharge for the same. An executor will not always pay a legacy under an ordinary power of attorney, as it is liable to be revoked.

Two persons of the same name.

(*b*) The testator and the executor were in this transaction of the same name, and it was necessary to distinguish them. This may be done as above, or by prefixing the relationship, as A. B, the father, A. B. the son, &c.

OF A LEGACY.

departed this life on or about the day of , without having revoked or altered his said will; *And* on or about the day of the same will was duly proved by the said [*executor*], in the court of : AND WHEREAS the exact amount of the debts of the said [*testator*] cannot immediately be ascertained, but it is conceived that his personal estate is fully sufficient to discharge and satisfy the same debts, and also all the legacies bequeathed by his the said [*testator's*] said will: AND WHEREAS the said [*purchaser*] hath contracted with the said [*legatee*] for the purchase of the said legacy or sum of pounds, and all benefit and advantage to arise therefrom, free from incumbrances, at or for the price or sum of pounds; AND WHEREAS the said [*purchaser*] is desirous of having the said legacy or sum of pounds and premises assigned to him the said [*purchaser*], in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that for carrying the desire of the said [*purchaser*] into effect, and in consideration (*of purchase money and receipt, as ante*, Vol. VI. p. 256), HE the said [*legatee*], with the privity and consent of the said [*executor*], party hereto, (testified by his being a party to and sealing and delivering these presents), *Hath* bargained, sold, and assigned, and by these presents *Doth* bargain, sell, and assign, unto the said [*purchaser*], his executors, administrators, and assigns, ALL that the said legacy or sum of pounds, so given and bequeathed by the said recited will of the said [*testator*] the elder unto the said [*legatee*], as hereinbefore is mentioned, and every part thereof, and the interest which shall hereafter become due for the same, and all benefits and advantages to arise therefrom; *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*legatee*], in, to, out of, or upon the said legacy or sum of pounds and premises, hereby assigned or intended so to be, *Together* with full power and authority, in the name or names of his executors or administrators, to receive and give effectual discharges for the said legacy or sum of pounds, and from time to time to commence, institute, and prosecute such actions, suits, and other lawful proceedings for the

probate of his will:

that the exact amount of the testator's debts cannot immediately be ascertained;

contract for the purchase;

and desire of the purchaser to have the premises conveyed.

Testatum;

in consideration of purchase money, legatee assigns to purchaser;

the legacy;

and all right;

power to sue for the same;

OF A LEGACY.

recovery of the monies, benefits, and advantages secured thereby, as shall from time to time, be deemed necessary or expedient. To HAVE, HOLD, RECEIVE AND TAKE the said legacy or sum of pounds, and the interest thereof, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, unto the said [*purchaser*], his executors, administrators, and assigns, for his and their absolute use and benefit: *And* the said [*legatee*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, that he the said [*legatee*] now hath in himself good right, full power, and lawful authority to assign the said legacy or sum of pounds hereby assigned, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, according to the true intent and meaning of these presents; *And also* that he the said [*legatee*] shall not nor will not, at any time or times hereafter, revoke, annul, or make void the aforesaid power or authority hereby given to the said [*purchaser*], his executors, administrators, and assigns, or make, do, or execute, or wittingly or willingly permit or suffer, any act, deed, or thing whatsoever, whereby or by reason or means whereof the said [*purchaser*], his executors, administrators, or assigns, may or shall in anywise be prevented or hindered from having, receiving, and taking the said legacy or sum of pounds, or any part thereof, to and for his and their own use and benefit: *And further*, that he the said [*legatee*], his executors and administrators, shall and will, at all times hereafter, upon every reasonable request, and at the proper costs and charges of the said [*purchaser*], his executors, administrators, and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other reasonable acts, deeds, and things, for the better and more effectually assigning and assuring the said legacy or sum of pounds hereby assigned, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns; and also for enabling him and them to receive, recover, and enforce the payment thereof respectively, to and for his and their own

habendum to the purchaser absolutely;

covenants for title;

good right to assign;

and will not revoke power;

and for further assurance.

use and benefit, according to the true intent and meaning of these presents, as by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required (*a*). IN WITNESS, &c,

OF A LEGACY.

ASSIGNMENT *of* FEES (*b*) *of* OFFICES.

FEES OF OFFICES.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. WHEREAS the said [*vendor*] is now in the possession and enjoyment of a certain office called , and of a certain place or situation in the office, and of the fees, salary, and emoluments arising therefrom respectively, for and during the term of his natural life; AND WHEREAS the said [*vendor*] hath contracted and agreed with and to the said [*purchaser*] for the absolute sale to him the said [*purchaser*] of all the right and interest of him the said [*vendor*], in the said fees, salary, and emoluments thereof, or thereto, at or for the price or sum of pounds; AND WHEREAS the better to effect such sale as aforesaid, the said [*vendor*] hath agreed to enter into the covenants hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of pounds, &c. (*payment of consideration*

Parties.

Recital that vendor is entitled to certain offices for his life;

contract for sale;

and that vendor hath agreed to enter into covenants for that that purpose.

Testatum;

(*a*) See 1 Byth. 277, for forms of bond to refund a legacy on a deficiency of assets.

(*b*) Offices of trust and confidence are not grantable except in some particular cases. Perk. s. 101; 7 Co. 28 b. But it would seem that the mode of assigning the fees for offices above given, would be good, even although the office itself were not strictly assignable. The pay of an officer in the army is not assignable. See 2 Byth. by Stewart, 291.

What offices are grantable.

FEES OF OFFICES.

and receipt, as ante, Vol. VI. p. 256), HE the said [*vendor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, in manner following (that is to say); that from and after the execution of these presents by him the said [*vendor*], and thenceforth as long as he shall continue to possess or exercise the said several offices or places, or any of them, he the said [*vendor*] shall and will stand and be possessed of, and interested in, and perform the duties of each of the said several offices or places so by him possessed or exercised as aforesaid, to the end and intent that all such fees, profits, salaries, and emoluments of, or to arise from the said several offices and places respectively, which he the said [*vendor*] shall or may be entitled to take or receive, or to have the charge of, shall henceforth, so long as the said [*vendor*] shall so possess or exercise the said offices or places, or any or either of them, be received by and be paid unto him the said [*purchaser*], his executors, administrators, and assigns; *And that* he the said [*vendor*] shall and will authorise and empower, and shall and will do all acts whatsoever, which may be necessary to authorise and empower him, his executors, administrators, or assigns, to receive the same fees, profits, salaries, and emoluments, or any of them, or any part thereof respectively, to and for his and their own use, nor do any act to prejudice or lessen the same, or to defeat or prevent the same from being received and applied, as far as he may be entitled thereto as aforesaid; *And that* he the said [*vendor*] shall and will, at all times hereafter, while he shall possess the said several offices or places, discharge and execute the duties thereof respectively, to the best of his abilities, and also shall and will, when and so often as he shall be thereunto required by the said [*purchaser*], his executors, administrators, and assigns, make and deliver to him a statement or account in writing of the said fees, profits, emoluments, and salaries, such accounts and statements to be signed by him the said [*vendor*], and to be verified by such vouchers as may reasonably be required to be produced, and as circumstances will admit; *And* for the better and more effectually enabling the said

covenant by vendor that so long as he shall continue in office he will perform the duties thereof;

to the end that the fees may be received by the purchaser;

and that he will execute the duties and deliver a statement of the fees;

appointment by

FEES OF OFFICES.

vendor, of purchaser to be his attorney to receive and recover the fees.

[*purchaser*] to receive the fees, profits, salaries, and emoluments, of the respective offices, or places aforesaid, he the said [*vendor*] hath constituted and appointed the said [*purchaser*] to be the true and lawful attorney of him the said [*vendor*], either in his own name or in the name of the said [*vendor*], as shall be thought most proper and convenient, to demand, sue for, recover, receive, and of and from all and every person and persons, public board or public boards, and of and from the clerks and other officers respectively attached to the said several offices aforesaid, all the fees, profits, salaries, and emoluments of the same several offices or places, and each and every of them, which henceforth shall from time to time become due or payable to, or be in the charge of the said [*vendor*], or which he shall be entitled to receive by any means whatsoever; *And* generally for him the said [*purchaser*] to act in the premises as fully and effectually, to all intents and purposes whatsoever, as he the said [*vendor*] might or could do, or lawfully might have done if these presents had not been executed: *And* whatsoever the said [*purchaser*] shall lawfully do, or cause to be done, in or about the premises, the said [*vendor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, to allow, ratify and confirm. IN WITNESS, &c.

OF LEASEHOLDS, POLICY OF INSURANCE, AND BOND.

ASSIGNMENT *of* LEASEHOLDS, POLICY *of Assurance, and* BOND, *by* COPARTNERS *to Trustees, in satisfaction of a* DEBT *due from them to a* CREDITOR, *for the Benefit of the Creditor, and Covenant by Copartners to keep Policy on Foot.*

THIS INDENTURE, made the day of , BETWEEN [A. B.] and [C. D.], of, &c. linen drapers and copartners, of the first part; [*purchaser*] of, &c. of the second part, and [*trustee*] (*a*), of, &c. of the third part. WHEREAS by an indenture of lease, bearing date the day of , and made or expressed to be made between [*lessor*], of the one part, and [*lessee*], of the other part; the said [*lessor*], for the considerations therein mentioned, did demise and lease unto the said [*lessee*], his executors, administrators, and assigns, *All that* messuage or tenement, situate and being in street, and numbered therein , in the parish of , in the city of , formerly in the tenure or occupation of [Z. Z.] deceased, and then in the occupation of [Y. Y.], and the appurtenances thereto belonging, *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, from the day of then last, for the term of years and one quarter of another year, at, under, and subject to the rent, covenants, and agreements in the said indenture of lease reserved and contained, on the part of the [*lessee*], his executors, administrators, and assigns, to be paid, observed, and performed. AND WHEREAS, by a deed poll under the hand and seal of the said [*lessee*], bearing date the day of , and endorsed on the said hereinbe-

Recital of lease for years and a quarter.

Deed poll, whereby premises are assigned to copartners;

Trustees.

(*a*) There is no necessity in this precedent, for the insertion of trustees, although they were in this instance inserted: they may therefore be left out with propriety.

OF LEASEHOLDS, POLICY OF ASSURANCE, AND BOND.

fore recited indenture of lease, the said messuage or tenement and premises mentioned therein, and demised thereby, were (for the consideration in the said deed poll mentioned) assigned by the said [*lessee*] to the said [*copartners*], their executors, administrators, and assigns, for the then residue of the said term of years and one quarter, subject to the rent and covenants in andby the said recited indenture of lease reserved and contained, and which, on the lessee's or assignee's part, ought to be paid and performed. And whereas by an instrument or policy of assurance, under the hands and seals of three of the directors of the Insurance Company, bearing date the day of , and numbered , the stock and funds of the said company were (in consideration of the annual premium therein mentioned) made liable to the payment to the executors, administrators, or assigns of [B. B.] (therein described), within three calendar months next after the decease of the said [B. B.] should be made known at the office of the said society, of the sum of pounds, and such other sum or sums of money as should become payable by way of bonus on the said policy, under or by virtue of the provisions and regulations expressed and contained in the deed of settlement whereby the said society was established. And whereas, by a bond or obligation in writing, bearing date the day of [J. J.] (therein described) became bound to the said (*one of the copartners*), in the penal sum of pounds, with a condition thereunder written for making void the same, if the said [I. I.] should pay unto the said [*copartner*], his executors, administrators, or assigns, the sum of pounds, with interest for the same after the rate of pounds for one hundred pounds by the year, on the day of , then next ensuing. And whereas by an indenture, bearing date the day of , and made or expressed to be made between the said [B. B.] of the one part, and the said [*copartners*] of the other part, the said hereinbefore recited policy, and all and every sums and sum of money that might arise or become due and payable thereon, were assigned by the said [B. B.], to the said [*copart-*

Policy of assurance on the life of B. B.

Bond whereby the sum of ——*l.* is secured to one of the copartners.

Indenture whereby the policy was assigned to the copartners;

OF LEASEHOLDS, POLICY OF ASSURANCE, AND BOND.

ners], their executors, administrators, and assigns, for their own use and benefit. And whereas the annual premiums which have become due in respect of the said hereinbefore recited policy, since the assignment thereof to the said copartners, have been duly paid by the said [*copartners*]. And whereas there is now due to the said [*copartners*], on the said hereinbefore recited bond, the principal sum of pounds, with an arrear of interest thereon, from the day of . And whereas the said [*copartners*] are indebted to the said [*purchaser*] in the sum of pounds, and it hath been agreed that in satisfaction of the said debt, the said [*copartners*] should assign to, or in trust for the said [*purchaser*], the said messuage or tenement and premises mentioned in and demised by the said hereinbefore recited indenture of lease: *And that* the said [*copartners*] should also assign to or in trust for the said [*purchaser*], the said hereinbefore recited bond, and the principal money and interest due thereon; *And that* in like satisfaction of the said debt to the said [*purchaser*], the said [*copartners*] should also assign the said hereinbefore recited policy, and should enter into the covenants hereinafter contained for keeping on foot the said policy, and for the payment of the annual premiums henceforth to become due in respect thereof. Now this indenture witnesseth, that in pursuance and part performance of the said agreement, and in satisfaction of the said sum of pounds so due and owing from the said [*copartners*] to the said [*purchaser*] as hereinbefore is mentioned; *And* in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*purchaser*] to each of them the said [*copartners*] paid at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby respectively acknowledged), They the said [*copartners*], according to their respective estates, rights, and interests therein, and at the request, and by the direction, and upon the nomination of the said [*purchaser*] (testified by his being a party to and sealing and delivering these presents), *Have*, and each of them *Hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *Do* and each of them *Doth* bargain, sell, assign, transfer, and set over unto the said

and that premiums have been paid thereon;

That money secured by bond is still due;

That copartners are indebted to purchaser in ——*l.*, and agree to assign premises in satisfaction thereof, and enter into the covenants hereinafter contained.

Testatum, whereby in satisfaction of the debt, copartners assign unto the trustees

the leaseholds,

[*trustees*], their executors, administrators, and assigns, ALL THAT the messuage or tenement, and all and singular other the premises which by the said hereinbefore recited indenture of lease were demised to the said [*copartners*] for the said term of years and one quarter, and which by the said hereinbefore recited deed poll were assigned to the said [*copartners*], their executors, administrators, and assigns, for the remainder of the said term, as hereinbefore is mentioned; *And* ALL THAT the said hereinbefore recited policy which was by the said hereinbefore recited indenture of the day of assigned to the said [*copartners*], their executors, administrators, and assigns, as hereinbefore is mentioned, *And* all and every the sums and sum of money to be had, recovered, or obtained under or by virtue of the said policy, *And* the full benefit and advantage of the said policy; *And* ALL THAT the said hereinbefore recited bond or obligation of the day of , and the principal sum of pounds now due thereon, and the interest now due and henceforth to become due for the same, *And* the full benefit and advantage of the said bond, *And* all the estate, right, title, interest, property, claim, or demand whatsoever of them the said [*copartners*], and each and every of them, in, to, out of, and upon the said messuage or tenement, policy, bond, monies, and premises hereby assigned or intended so to be, and every part thereof respectively. TO HAVE AND TO HOLD the said messuage or tenement and leasehold premises hereby assigned, or intended so to be, and every part thereof, with their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of years and one quarter, subject to the rents, covenants, and agreements in and by the said hereinbefore recited indenture of lease reserved and contained on the lessee's part to be paid, observed, and performed; *But* nevertheless *In trust* for the said [*purchaser*], his executors, administrators, and assigns, for his and their own absolute use and benefit; AND TO HAVE, HOLD, RECEIVE, AND TAKE the said policy, bond, monies, and all other the premises hereby assigned or intended so

OF LEASEHOLDS, POLICY OF ASSURANCE, AND BOND.

the policy,

the bond,

and all the estate.

Habendum, as to the leaseholds to the trustees, for the remainder of the term subject to the rent, &c.

In trust for purchaser.

Habendum, as to the policy and bond, to trustees ab-

OF LEASEHOLDS, POLICY OF ASSURANCE, AND BOND.

solutely In trust for purchaser;

Power of attorney from copartners to trustees to receive money on policy and bond.

to be, unto the said [*trustees*], their executors, administrators, and assigns, absolutely: *But* nevertheless *In trust* for the said [*purchaser*], his executors, administrators, and assigns, for his and their own absolute use and benefit: *And* the said [*copartners*] *do*, and each of them *doth* hereby irrevocably make, nominate, and appoint, and in their and each of their place and stead, put the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, to be the true and lawful attorney and attorneys of the said [*copartners*], and each of them, to ask, demand, sue for, recover, and receive of and from all and every the person or persons who are, is, can, shall, or may be liable to pay or transfer the same, the monies to be had, received, recovered, or obtained under or by virtue of the said policy hereby assigned or intended so to be, and the principal money now due on the said bond hereby assigned or intended so to be, and the interest now due and henceforth to become due for the same and every part thereof; *And* on the payment thereof, or of any part thereof respectively, to give, sign, and execute acquittances, releases, and other discharges for the same respectively; *And* on nonpayment thereof, or of any part thereof respectively, to use such ways and means by action or suit, or by any other proceeding or proceedings at law or in equity, as they or he shall think proper; *And* for all or any of the purposes aforesaid to appoint or employ one or more person or persons as attorney or attorneys of them or him; *And* in all the acts, deeds, matters or things hereinbefore mentioned, to use the names or name of the said [*copartners*], or any of them, and generally to do, execute, and perform any act, deed, matter, or thing whatsoever relative to the premises, as fully to all intents and purposes as the said [*copartners*], or any of them, might or could have done in their or his own proper persons or person, in case these presents had not been executed; *And* whatsoever the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall lawfully do and cause to be done in or about the premises, the said [*copartners*] do hereby jointly for themselves, their heirs, executors, and administrators, and every of them doth

OF LEASEHOLDS, POLICY OF ASSURANCE, AND BOND.

hereby separately for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns to allow, ratify, and confirm; *And* the said [*copartners*] do hereby jointly for themselves, their heirs, executors, and administrators, and each of them doth hereby separately for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, in manner following (that is to say); that they the said [*copartners*], nor any of them, shall not nor will at any time or times hereafter revoke, annul, or make void the said power or authority hereby given to the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, or make, do, or execute, or cause to be made, done, or executed, any act, deed, matter, or thing whatsoever, whereby or by means whereof the said [*trustees*], or the survivor of them, his executors, administrators, and assigns, can, shall, or may be in anywise prevented or hindered from receiving the said principal monies and interest hereby assigned, or intended so to be, or any part thereof, to and for their and his own use and benefit; *And* that for and notwithstanding any act, deed, matter, or thing whatsoever, by them the said [*copartners*], or any of them, made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, the hereinbefore recited indenture of lease is, at the time of sealing and delivering these presents, a good and effectual lease and demise in the law, and not forfeited, surrendered, assigned, or become void or voidable, and that the rents, covenants, conditions, and agreements therein contained have, on the tenant's or lessee's part, been duly performed and observed up to the day of ; *And* that the said [*copartners*] have, or one of them now hath, in themselves or himself, good right, full power, and lawful and absolute authority to assign the said messuage or tenement, policy, bond, monies, and premises hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, in manner aforesaid, according to the true intent and meaning of these

Covenant by copartners that they will not revoke power;

that the lease is valid;

that they have good right to assign the leasehold premises, policy, and bond,

OF LEASEHOLDS, POLICY OF ASSURANCE, AND BOND.

presents; *And* also that they the said [*copartners*], and the survivors and survivor of them, his executors and administrators, shall and will, at any time or times hereafter, upon every reasonable request, and at the proper costs and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other reasonable acts, deeds, and things, for the further, better, and more effectually assigning, assuring, and confirming of the said messuage or tenement policy, bond, monies, and premises hereby assigned, or intended so to be, unto the said [*trustees*], and the survivor of them, his executors, administrators, and assigns; and also for enabling him and them to receive, recover, and enforce the payment thereof respectively, to and for their and his own use and benefit, according to the true intent and meaning of these presents, as by the said [*trustees*], or the survivor of them, and the executors, administrators, and assigns of such survivor, or his or their counsel in the law, shall be reasonably advised, devised, or required;

and for further assurance.

Covenant by purchaser to pay rents;

And the said [*purchaser*] *Doth* hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*copartners*], and each of them, and their and each of their executors, administrators, and assigns, that he the said [*purchaser*], his executors, administrators, and assigns, shall and will, from time to time, and at all times hereafter, well and truly pay or cause to be paid the said yearly rent in and by the said hereinbefore recited indenture of lease reserved, when and as the same shall henceforth become due and payable;

and perform covenants;

And also shall and will well and truly observe and perform the covenants and agreements in the said indenture of lease contained, and which henceforth on the lessee's or assignee's part are or ought to be observed and performed;

and indemnify the copartners therefrom;

And also shall and will, from time to time, and at all times, save, defend, keep harmless and indemnified the said [*copartners*], and each of them, and their and each of their heirs, executors, and administrators, and estate and effects whatsoever and wheresoever, from and against the payment of the said rent, and the observance and performance of the said covenants and agreements, and from

and against all actions, suits, claims, and demands for or on account of the same, or in anywise relating thereto: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, THEY the said [*copartners*] *Do* hereby jointly for themselves, their heirs, executors, and administrators, and each of them *Doth* hereby separately for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, that they the said [*copartners*], or some or one of them, or their or some or one of their heirs, executors, or administrators, shall and will, during the life of the said [B. B.], on whose life the said hereinbefore recited policy is granted, keep the said policy on foot; and well and truly pay, or cause to be paid, the annual premiums payable in respect of the said policy, when and as the same shall from time to time become due, or ought to be paid at the office of the said company by which the said policy was granted, as hereinbefore is mentioned. IN WITNESS, &c.

OF LEASEHOLDS, POLICY OF ASSURANCE, AND BOND.

Second testatum,

whereby copartners covenant to pay premiums on policy.

ASSIGNMENT *of a* BOND, *and* JUDGMENT *recovered thereupon, and all Interest to arise therefrom.*

OF BOND AND JUDGMENT.

THIS INDENTURE, made the day of , in the year of our Lord , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. spinster, of the other part. WHEREAS [A. B.] of, &c. by his bond or obligation in writing, bearing date the day of , became bound to the said [*vendor*] in the sum of pounds, with a condition thereunder written, that if the said [A. B.], his heirs, executors, or administrators, should pay or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, on the day of , with interest for the same at the rate of five pounds for one hundred pounds for a year, then the said bond or obligation should be void: AND WHEREAS the said [*vendor*], in term in the

Parties.

Recital of bond, whereby A. B. became bound to vendor in the sum of —*l.*

and that judgment was ob-

OF BOND AND JUDGMENT.

tained on the bond;

that all interest has been paid up to —— on bond, but that the sum itself is still due;

that purchaser has agreed for the purchase of the bond, &c.

Testatum, whereby in consideration of purchase-money, vendor assigns to purchaser.

Parcels.

And all the right.

said year, obtained judgment in the Court of Exchequer at Westminster, in an action of debt on the said bond or obligation, against the said [A. B.], for the sum of pounds, and pounds costs; AND WHEREAS the said [A. B.] hath paid all interest for the said sum of pounds to the said [*vendor*] up to the day of , but the said sum of pounds now remains secured to the said [*vendor*] by virtue of the said bond and judgment, together with pounds for the interest thereof, from the said day of , making together the sum of pounds: AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said bond and judgment, and of the said sum of pounds, and interest thereby secured and to become due thereon, and of all benefit and advantage to arise therefrom, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] paid, at or immediately before the sealing and delivering of these presents, (the receipt of which sum of pounds the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, *Doth* hereby acquit, release, and for ever discharge the said [*purchaser*], her executors, administrators, and assigns), HE the said [*vendor*] *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over unto the said [*purchaser*], her executors, administrators, and assigns, ALL THAT the said hereinbefore recited bond or obligation, *And* ALL THAT the said hereinbefore recited judgment thereon obtained, *And* ALL THAT the said sum of pounds thereby secured and made payable, and all interest now due and owing, and which may or shall hereafter grow and become due for the same principal sum, *And* all and every other sum and sums of money whatsoever, which may, can, or shall be had, gotten, or received by virtue of the said bond or obligation, and judgment, or either of them, *And all* the right, title, interest, and property whatsoever, of him the

said [*vendor*], in and to or out of the said bond or obligation, judgment, and principal sum and interest, and other sum and sums hereby assigned, or intended so to be, and every of them, and every part thereof, To HAVE, HOLD, RECEIVE, AND TAKE, the said bond or obligation, judgment, principal sum of pounds and interest thereby secured and made payable, and all and singular other the premises hereby assigned, or intended so to be, unto the said [*purchaser*], her executors, administrators, and assigns, to and for her and their own proper use and benefit; *And* the said [*vendor*] *Doth* by these presents authorise and empower the said [*purchaser*], her executors and administrators, for him the said [*vendor*], his executors and administrators, and in his or their names, or in the name or names of the said [*purchaser*], her executors, administrators, or assigns, and to and for his and their own use and benefit, but at his and their costs and charges, to ask, demand, sue for, recover, and receive, by such ways or means as he or they shall think fit, of and from all and every person and persons whom it doth, may, or shall concern, the said bond or obligation, judgment, principal sum of pounds, and interest, hereby assigned, or intended so to be, or any part or parts thereof, *And* all and every other sum and sums of money that may, shall, or can be in any ways had, recovered, or gotten by virtue of the said bond or obligation, or judgment, or either of them; *And* upon payment thereof, for the said [*vendor*], his executors and administrators, and in his or their name or names, and as and for his and their act and deed, or acts and deeds, or in the name or names of the said [*purchaser*], her executors, administrators, and assigns, good and sufficient releases and discharges for the same to make, give, sign, seal, deliver, and execute, as he or they shall think fit, and generally to act and do, in, about, or in anywise relating to the premises, or any of them, as to him or them shall seem meet; and in such and in the same manner, to all intents and purposes, as he the said [*vendor*], his executors or administrators, might or could do himself, or themselves; *And* whatever the said [*purchaser*], her executors, or assigns, shall lawfully do, or cause to be done, in, about, or

OF BOND AND JUDGMENT.

Habendum to the purchaser absolutely;

Power of attorney to receive the monies due on bond, &c.

Power to give receipts.

Covenant to ratify all lawful acts.

OF BOND AND JUDGMENT.

in anywise relating to the premises, or any of them, he the said [*vendor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], her executors, administrators, and assigns, to allow, ratify, and confirm; *And* the said [*vendor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, &c. that he the said [*vendor*] hath not at any time heretofore made, done, committed, executed, or knowingly or willingly suffered or executed, any matter or thing whatsoever, whereby or by means whereof he the said [*purchaser*], his executors, administrators, or assigns, may, can, or shall be anywise prevented or hindered from receiving and taking the said principal sum of pounds hereby assigned, or any part thereof, or any interest now due or owing, or which may or shall hereafter grow and become due for the same, as and when the same shall become due and payable, according to the condition of the aforesaid bond or obligation, to and for her and their own use and benefit; *And also* that he the said [*vendor*], his executors or administrators, shall not, and will not, at any time or times hereafter, without the consent of the said [*purchaser*], her executors, administrators, or assigns, in writing signed with her or their hand or hands, revoke, annul, or make void, the aforesaid authority or power hereby given to him and them, or without such consent, release or discharge the said bond or obligation, or judgment, or receive the said sum of pounds and interest hereby assigned, or intended so to be, or any part thereof, or make or execute any act, deed, matter, or thing whatsoever, whereby or by means whereof the said [*purchaser*], her executors, administrators, or assigns, may, can, or shall be in any ways prevented or hindered from receiving or taking the said principal sum of pounds and interest thereof hereby assigned or intended so to be, to and for her and their own use and benefit; *And* the said [*vendor*] *doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], her executors, administrators, or assigns, that he the said [*vendor*], his executors and administrators, shall and will,

Covenant by vendor that he has done no act to incumber;

and that he will not revoke power;

and for further assurance.

OF BOND AND JUDGMENT.

at any time or times hereafter, upon the request, and at the costs and charges of the said [*purchaser*], make, do, and execute, or cause to be made, done, and executed, all and every such further and other reasonable acts, deeds, and things, for the better and more effectually assigning, assuring, and confirming of the said bond or obligation, judgment, and premises hereby assigned, or intended so to be, unto the said [*purchaser*], her executors, administrators and assigns; and also for enabling her and them to receive, recover, and enforce the payment of all the sum and sums of money to arise therefrom respectively, to and for his and their own use and benefit, according to the true intent and meaning of these presents, as by the said [*purchaser*], her heirs, executors, administrators, or assigns, or her or their counsel in the law, shall be reasonably advised, devised, and required. IN WITNESS, &c. (*a*).

Stamp.

(*a*) It has lately been decided, that a judgment debt is not within the meaning of the word *property*, in the 55 Geo. III. c. 184. Sched. part I. Conveyance, and Vol. VI. 265; and therefore the assignment of a judgment debt does not require an *ad valorem* stamp. *Warren* v. *Howe*, 2 B. & C. 281. and approved of in *Belcher* v. *Sikes*, 6 B. & C. 234. The above deed therefore would only be liable for a common deed stamp of 1*l.* 15*s.*

It should be observed, however, that this decision has not met with the approbation of the part of the profession most competent to form a correct conclusion upon the point; and perhaps it is not saying too much, to hope that on the question coming again in a direct form before the court, it would be induced to reconsider its opinion.

This opportunity may be taken to notice some late cases upon the proper stamps to be affixed to purchase deeds; and to understand them fully, reference should be made to the provisions of the 55 Geo. III. c. 184, relating to these deeds given at length, Vol. VI. 265—270.

An instrument purporting to be a conveyance, but not under seal, does not require a deed stamp;

An instrument in writing, purporting to be a conveyance of lands, but which is not under seal, is not a deed, and cannot effect such conveyance; and must be stamped therefore not as a deed, but as an agreement. *The King* v. *Inhabitants of Ridgwell*, 6 B. and C. 665. So where by an instrument in writing, not under seal, A. in consideration of 7000*l.* agreed to present to a rectory on the next avoidance, such person as B. should nominate, and to furnish an abstract, and execute

OF BOND AND JUDGMENT.

a conveyance of the next presentation to B. This was held not to require an *ad valorem* stamp. *Wilmot* v. *Wilkinson*, 6 B. and C. 506, and Vol. VI. p. 536.

Trust deed for the benefit of creditors, does not require an *ad valorem* stamp.

An assignment by A. and B., for a nominal consideration, of all their personal estate to trustees, in trust to sell, and out of the proceeds of such sale to discharge the debts due to the trustees, and then the debts due to other creditors, does not require an *ad valorem* stamp, but only a common deed stamp, as it is not a 'conveyance' within the act. *Coates* v. *Perry*, 3 Brod. and Bing. 48, and 6 J. B. Moo. 188. S. C.

Or a family arrangement.

So also where a father conveyed lands to a son, as well in consideration of natural love and affection, as also in consideration of the provision which the son had that day made by his bond of 1500*l.* in augmentation of portions or fortunes of his sisters. This was held not to be a sale of the lands, but a family arrangement, and therefore not liable to an *ad valorem* stamp. *Denn* dem. *Manifold* v. *Diamond*, 4 B. and C. 243, 6 Dow. and Ry. 328.

Lease not liable to *ad valorem* duty.

A lease for years, in consideration of a sum certain, and at a pepper corn rent, does not require an *ad valorem* stamp. *Roe* dem *Larkin* v. *Chenhalls*, 4 M. and S. 23. Where A. in consideration of 1000*l.* down, and a covenant to pay 1000*l.* per annum for ten years, covenanted to relinquish his trade to B., and to allow him to carry it on in A.'s house, B. to have the whole house (except one room) and fixtures; it was held that this was not a sale of an interest in the house and fixtures for ten years, and was therefore not liable to *ad valorem* duty. *Lyburn* v. *Warrington*, 1 Stark. 162.

Nor assignments of a share in partnership effects to another partner.

Where, on the dissolution of a partnership, the share of a partner is valued at a certain sum, in consideration of which, he assigns his share of the partnership effects to another partner, no *ad valorem* duty is payable. *Belcher* v. *Sikes*, 6 B. & C. 234.

What the duty is payable on.

The *ad valorem* duty payable on a deed, is on the consideration expressed therein, whether it be the true consideration or not. *Robinson* v. *Macdonnell*, 5 M. and S. 228. *Duck* v. *Braddyll*, 13 Pri. 455, 1 M'Clel. 217. And see Vol. VI. 263.

Indorsement.

If there be an indorsement on a deed, if it do not controul the operation of the deed, the words contained in it are not to be reckoned as part of the 1080 words for which the further progressive duty of 1*l.* 5*s.* is imposed by that statute, and need not have any other stamp. *Winder* v. *Fearon*, 4 B. and C. 663. And see also *Lord Dudley* v. *Robins*, 3 Car. and Pay. 26. But where the indorsement controls the operation of the deed, as where after the execution of an annuity deed a clause of redemption was indorsed on it, here it was held that a stamp was necessary. *Schumann* v. *Weatherhead*, 1 East, 537. Where the indorsement is not of much consequence, it would seem, that although it control the effect of the deed, no new stamp is necessary. *Herne*

v. *Hale*, 3 Esp. 237. It is, however, difficult to reconcile this last case with the preceding ones. OF BOND AND JUDGMENT.

Where a schedule is referred to as annexed to a deed, it forms part of the deed, and must be counted. *Lake* v. *Ashwell*, 3 East, 326. *Attwood* v. *Small*, 3 Car. and Pay. 208, 7 B. and C. 390, 1 Man. and Ry. 246. S. C. But where a schedule is a separate instrument, it only requires a schedule stamp, of 1*l.* 5*s.* *Lake* v. *Ashwell, ubi supra.* The receipt for the consideration money is not to be counted. *Bowring* v. *Stevens*, 2 Car. and Pay. 337. Schedule. Receipt.

Assignment *of a* Life (*a*) *Interest in the* Dividends *of a Sum of* Stock.

OF LIFE INTEREST IN STOCK.

THIS INDENTURE, made the day of , Between [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. Whereas, by an indenture of settlement bearing date the day of , and made, or expressed to be made, between the said [*vendor*], of the first part; [E. G.] of the same place, spinster, of the second part; and [*trustees*] (therein respectively described), of the third part; it was (in consideration of a marriage then intended, and shortly after- Parties. Recital of marriage settlement, whereby a sum of stock was vested in the names of trustees;

(*a*) One of the difficulties in assignments of stock is to obviate a doubt which often arises thereon, whether the transaction is an absolute *bonâ fide* sale of the dividends, or whether it is a grant of an annuity; or, as was contended in one case, an assignment of an annuity, and consequently coming within the provisions of the 53 Geo. III. c. 141: for which see 1 Byth. 330. In the case of *Hood* v. *Burlton*, the circumstances were as follows: By the marriage settlement of Ferdinand and Diana Burlton, stock in the funds was settled to the separate use of the wife for life. Mrs. Burlton having occasion for the sum of 800*l.* by an indenture of April 1786, reciting her life interest in the stock, and that in consideration of the sum of 400*l.* to be advanced to her by

OF LIFE INTEREST IN STOCK.

wards solemnized between the said [*vendor*] and [E. G.]), agreed and declared, that the said [*trustees*], their executors, administrators, and assigns, should stand possessed of and interested in a sum of pounds navy five per cent. bank annuities, which had been transferred by the said [*vendor*] into the names of the said [*trustees*], in the books of the governor and company of the bank of England, as in the said indenture is mentioned, and the dividends and annual produce thereof, *Upon the trusts* in the same indenture declared and contained concerning the same (that is to say); *In trust* for the said [*vendor*], his executors, administrators, and assigns, until the said then intended marriage should be solemnized; and after the solemnization thereof, *Upon trust* that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should pay the dividends and annual produce of the said sum of

upon trust to pay the dividends to vendor for life;

Richard Gildet, she had agreed to sell to him the annual sum of 50*l.* part of the interest dividends and annual proceeds so payable to her for her separate use, during the term of her natural life; and that in consideration of the like sum to be advanced to her by Edward Hood, she had agreed to sell to him the annual sum of 50*l.* other part of said interest, &c. And for securing to them the payment of the said annual sums, it was agreed, that she should appoint and assign all the interest, dividends, and produce of the several funds, to become due, to John Hood, his executors, administators, and assigns, upon the trusts after declared; these funds were accordingly transferred to John Hood, upon trust to pay 50*l.* part of said dividends to Lucy, wife of Richard Gildet, for her separate use for life, and in case of her death in the life time of her husband and Diana Burlton, then to her husband; and upon trust to pay 50*l.* other part, to Edward Hood; and upon further trust to make good the deficiency of some annuities which Mrs. Burlton was bound to pay Jane Clark, and to pay the surplus to Mrs. Burlton. In this deed Ferdinand Burlton covenanted to pay to the trustee any sum in which the said sums should be deficient to answer the annual payments to Gildet and Hood, and a proportionable share in case of the death of Diana between the days of payment; and for further securing these annual payments, he also gave a bond in the penal sum of 1600*l.* with warrant of attorney.

A memorial of this transaction was registered, expressed to be "a

pounds navy five per cent. bank annuities, to, or permit the same to be received by the said [*vendor*], or his assigns, during his life, and after his decease should stand possessed of the same sum of pounds navy five per cent. bank annuities, and the dividends and annual produce thereof, in such manner as in the said indenture is mentioned: *And* in the said indenture is contained a power enabling the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, with the consent in writing of the said [*vendor*], during his life, and after his decease, at their or his discretion, from time to time, to alter and vary the said securities upon which the said sum of pounds was then invested, into other securities as therein is expressed: AND WHEREAS, in pursuance of a provision for that purpose contained in a certain act of parliament made and passed in the third year of the reign of his present majesty king

OF LIFE INTEREST IN STOCK.

and that in the settlement was contained a power to vary the securities.

That trustees accepted new Fours, in lieu of the old securities.

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memorial to be registered pursuant to act of parliament, of one annuity of 100*l.* granted by Diana and Ferdinand Burlton to John Hood, his executors, &c., for the life of Diana Burlton, in trust to pay 50*l.* part thereof to Lucy wife of Richard Gildet, and 50*l.* other part thereof, to Edward Hood, at and for the price and sum of 800*l.*; which annual sum of 100*l.* is secured and made payable out of certain stock or funds settled in trust by the marriage settlement of Ferdinand and Diana Burlton, the dividends and interest whereof are settled upon trust for her own use and benefit, to be at her own disposal; and which are assigned by indenture of 5 April, 1786, to John Hood, upon the trusts aforesaid." The memorial then took notice of the subsequent trusts; and also, that the said annual sum of 100*l.* was further secured by bond and warrant. Upon the bill of Edward Hood to have the benefit of the trust, it was objected that this was a sale of an annuity, and that the memorial was not sufficient. The questions were, first, whether this was a sale of part of these dividends upon which no memorial was necessary, or of an annuity; secondly, if it was to be considered as the sale of an annuity, whether the memorial registered was not sufficient within the annuity act 17 Geo. III. c. 26.

Lord Commissioner Eyre.—"It will be very hard upon the plaintiff if this claim cannot be supported: if not, it must be upon considerations of public policy, which requires, that however fair this kind of trans-

OF LIFE INTEREST IN STOCK.

George the Fourth, intituled "An Act for Transferring several Annuities of Five Pounds per Centum per Annum into Annuities of Four Pounds per Centum per Annum," the said [*trustees*] did accept in lieu and substitution of the said sum of pounds navy five per cent. bank annuities, so vested in them upon the trusts of the said hereinbefore recited indenture as aforesaid, the sum of pounds, new four per cent. annuities, created by the said act, which sum was accordingly transferred into their names in the said books of the governor and company of the bank of England; AND WHEREAS the said [*vendor*] hath contracted and agreed with the said [*purchaser*] for the absolute sale to him the said [*purchaser*] of the dividends and annual produce which shall hereafter, during the life of the said [*vendor*], become due and payable for or in respect of the said sum of pounds, new four per cent. annuities, which is now standing in the

Contract for sale.

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action may be, yet for the general security of the public, it must be under severe restrictions, which must be strictly conformed to by all, as well people who mean to act fairly, as those who are the immediate objects of the act. I was inclined, thinking this a fair transaction, to bring it to the case of a purchase of these dividends; and I should have been inclined to think it not an annuity, and not within the act: but when the whole case, and the effect of the instruments come to be considered, it is not a purchase of these dividends: and one observation puts it out of doubt; they were to have beyond these dividends so much paid as would make up the deficiency; and it was foreseen, that it would * happen, that the *cestuy que vie* would * die, not upon the day the dividends would be due; and an express provision is made for that case. Therefore it is clear, that upon the whole context of the instruments taken together, it was intended to be an absolute annuity of 50*l.* to each. One objection was made, which I was inclined to think might also avail the plaintiff; namely, that no annuity was *granted*: but upon consideration, I am not satisfied that that will serve him. It is manifestly the object of the act to comprehend all manner of instruments calculated to secure the payment of an annuity. Though the language is, "Whereby an annuity shall be granted," yet the construction ought to be, whereby it shall in any manner be secured to be paid; and, therefore, if the court thinks this an instrument, whereby an annuity is secured to be paid, however it has been granted, all those instruments

[* *Qu.* might.]

names of the said [*trustees*] in the said books of the governor and company of the bank of England, as hereinbefore is mentioned, or from or in respect of any stocks, funds, or securities, for or into which the said sum of pounds, new four per cent. annuities, or any part thereof, shall at any time thereafter be altered or varied, free from incumbrances, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds, by the said [*purchaser*] to the said [*vendor*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same doth hereby acquit, release, and for ever discharge the said [*purchaser*], his executors, administrators, and assigns), HE the said [*vendor*]

OF LIFE INTEREST IN STOCK.

Testatum, whereby in consideration of the sum of ——*l.* vendor assigns.

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must be within the act, or there is an end of it. I am of opinion, that I am obliged to hold this annuity within the act; and that there must be a regular memorial within the terms of the act of all the instruments by which it is secured. Then two objections arise to this memorial; that it is not a memorial of the real annuity granted: and that it does not express for whom it is granted. I confess I cannot get over the first of these objections; for when we look at the instruments, there is no annuity of 100*l.* to J. Hood: but all the dividends are granted to him out of them, to pay two different annuities to two different persons, for different considerations by them respectively paid; and how to say an annual sum appearing evidently to be intended to be paid to two different parties, is one annuity granted to a person, to whom in truth it is not granted, but who is only trustee of the whole fund to secure the distributive payments, I cannot see. Then there really is no memorial of these two annuities. The next objection is more critical, but applies to a plain provision in the act, which is not satisfied. It directs the memorial to specify for whom the annuity is granted. Here it appears to be for Lucy Geldit for life, for her separate use, and if her husband survives her, then for him. The memorial has not stated it to be for him in that event. Can we then say, they have stated, for whom it is granted? The direction of the act is plain, and capable of being pursued: and there is no good reason why the full extent of the benefit intended should not be stated. As to both these points, that the an-

OF LIFE INTEREST IN STOCK.

Hath granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over unto the said [*purchaser*], his executors, administrators, and assigns, ALL THOSE the dividends and annual produce which shall hereafter, during the life of the said [*vendor*], arise, accrue, or grow due from, upon, or in respect of the said sum of pounds, new four per cent. annuities, which is now standing in the names of the said [*trustees*] in the said books of the governor and company of the bank of England, as hereinbefore is mentioned; *And also* from, upon, or in respect of any stocks, funds, and securities, for or into which the said sum of pounds, new four per cent. annuities, or any part thereof, shall at any time hereafter, during the life of the said [*vendor*], be altered or varied, *And* all the power and authority, powers and authorities, of the said [*vendor*] to demand, sue for, recover, and receive, and

Parcels.

with power to sue for the same;

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nuity is not properly described, and that all the persons interested are not stated in the memorial, I am of opinion, that a sufficient memorial within the act has not been registered, and therefore that the annuity is void, and that the bill must be dismissed."

The *Lord Commissioner Ashurst* concurred, 2 Ves. jun. 29.

Thus also in *Charretie* v. *Vause*, 1 Sim. 153. by an indenture dated 6th of June, 1821, after reciting that A. had agreed with B., for the purchase of the annual sum of 150*l.*, part of the yearly dividend of 18,000*l.* 3 per cent. consols, it was witnessed, that in consideration of 1,300*l.*, the said B. agreed to assign to the said A., his executors, administrators, and assigns, the clear yearly sum of 150*l.*, being part of the dividends to be paid half yearly, except that as there would be only one months interest due in July then next, when the said dividends would become payable, it was agreed that A. should receive the sum of 12*l.* 10*s.* only at that time, and afterwards the whole of the said annual sum, by half yearly payments, as they should become due. The Vice-Chancellor held this to be the sale of an annuity. He thought the form of the expression was immaterial. It was clearly not a sale of a proportion of the dividends, because the deed being executed in June, especially provides that the grantee should not take such a proportion of the July dividends as 150*l.* bears to the whole amount, but 12*l.* 10*s.* only, being in the language of the deed, the proportionable part of the annual sum of 150*l.* which would be due and payable at the time. He

give effectual acquittances, releases, and discharges for the same interest, dividends, and annual produce, and every or any of them; *And* all the right, title, interest, property, profit, claim, and demand whatsoever, both at law and in equity, of him the said [*vendor*], in, to, out of, or upon the same interest, dividends, and annual produce, and every part thereof, To HAVE, RECEIVE, TAKE, AND ENJOY the said interests, dividends, and annual produce, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, unto the said [*purchaser*], his executors, administrators, and assigns, for his and their absolute use and benefit; *And* the said [*vendor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the [*purchaser*], his executors, administrators, and assigns, in manner following (that is to say); that he the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority to assign and assure the said interest, dividends, and annual produce, monies, and premises hereby assured, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, according to the true intent and meaning of these presents: *And further*, that he the said [*vendor*] hath not, at any time or times heretofore, made, done, or executed, or knowingly and willingly suffered, and shall not, nor will, at any time hereafter, make, do, or execute, or knowingly or willingly suffer any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said [*purchaser*], his executors, administrators, or assigns, may, can, or shall be in anywise prevented or hindered from having, receiving, and taking the said interest, dividends, annual produce, monies, and premises hereby assigned, or intended so to be, or any of them, or any part thereof, to and for his and their own use

OF LIFE INTEREST IN STOCK.

and all the right;

Habendum, to purchaser absolutely;

Covenant by vendor that he has good right to assign;

that he has not done, and will not do any act to incumber;

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thought this circumstance was decisive that this transaction was not a sale of a proportion of the dividends, but a grant of an annual sum of 150*l.* for the life of B.; and that *Hood* v. *Burlton* was in point, both as to the form of the expression used, and the principle of the decision. And see 1 Byth. 447.

OF LIFE INTEREST IN STOCK.

and for further assurance.

and benefit, in manner aforesaid, according to the true intent and meaning of these presents: *And further*, that he the said [*vendor*], his executors or administrators, and all other persons whomsoever having or claiming, or who shall or may hereafter have or claim, any right, title, or interest in, to, or out of the said interest, dividends, annual produce, monies, and premises hereby assigned, or intended so to be, by, from, through, under, or in trust for him, shall and will, from time to time, and at all times hereafter, at the request, and costs and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or procure to be made, done, and executed, all such further and other assignments, assurances, acts, deeds, matters, or things, for the better and more effectually assigning, assuring, and confirming the said interest, dividends, annual produce, monies, and premises hereby assigned, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, and for enabling him or them to receive, recover, and enforce the payment thereof respectively, to and for his and their own use and benefit, according to the true intent and meaning of these presents, as by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required. IN WITNESS, &c.

Assignment *of a Share in a* Newspaper (*a*).

OF SHARE IN NEWSPAPER.

THIS INDENTURE, made the day of , Between [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. Whereas, in or about the month of , 18 , a weekly newspaper called the was established, *And* the same is now in great circulation; And whereas, the said [*vendor*] is possessed of or well entitled to a fifth part or share in the said newspaper; And whereas the said [*purchaser*] hath contracted with the said [*vendor*] for the absolute sale to him of the said part or share of him the said [*vendor*], of and in the said newspaper, and all benefit and advantages to arise therefrom, free from incumbrances, at or for the price or sum of pounds. Now this indenture witnesseth, that in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] well and truly paid, at or before the sealing and delivery of these presents (the receipt of which said sum of pounds, he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his executors, administrators, and assigns), He the said [*vendor*] *Hath* bargained, sold, assigned, and set over, *And* by these presents *Doth* bargain, sell, assign, and set over unto the said [*purchaser*], his executors, administrators, and assigns, All that fifth part or share of of him the said [*vendor*], of and in All that newspaper called the , *Together* with all profits, benefits, and advantages in any manner to arise therefrom; *And* all the right, title, interest, property, profit, claim, and

Parties.

That newspaper was established;

that vendor is possessed of a share.

Contract for purchase.

Testatum, whereby, in consideration of purchase money,

vendor assigns

parcels,

and all the right.

(*a*) Purchases of copyrights of books are almost always carried into effect by agreements, and seldom by way of a formal assignment. Copyright.

OF SHARE IN NEWSPAPER.

demand whatsoever, both at law and in equity, of him the said [*vendor*], in, to, out of, or upon the same part or share and premises hereby assigned, or intended so to be, *Together* with full power and authority, in the name or names of the said [*vendor*], his executors or administrators, to receive and give effectual discharges for all sum or sums of money, and from time to time to commence, institute, and prosecute such actions, suits, and other lawful proceedings, for the recovery of the monies, benefits, and advantages hereby assigned, or intended so to be, as shall be deemed necessary or expedient. **To** HAVE, HOLD, RECEIVE AND TAKE the said part or share of him the said [*vendor*], of and in the said newspaper called the , and all and singular other the premises hereby assigned, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, for his and their absolute use and benefit: *And* the said [*vendor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, that he the said [*vendor*] now hath in himself good right, full power, and lawful authority to assign the said part or share and premises hereby assigned, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, according to the true intent and meaning of these presents; *And* also that he the said [*vendor*] shall not, nor will, at any time or times hereafter, revoke, annul, or make void the aforesaid power or authority hereby given to the said [*purchaser*], his executors, administrators, and assigns, or make, do, or execute, or wittingly or willingly permit or suffer any act, deed, or thing whatsoever, whereby or by reason or means whereof the said [*purchaser*], his executors, administrators, or assigns, may or shall in anywise be prevented or hindered from having, receiving, and taking the said part or share and premises, or any part thereof, to and for his and their own use and benefit: *And further*, that he the said [*vendor*], his executors, administrators, and assigns, shall and will, at any time or times hereafter, upon every reasonable request, at the proper costs and charges of the said [*purchaser*], his executors, administrators, or as-

Power to sue.

Habendum to purchaser absolutely.

Covenant for title:

good right to assign;

and that vendor will not revoke power;

and for further assurance.

signs, make, do, and execute, or cause to be made, done, and executed, all and every such further and other reasonable acts, deeds, and things, for the better and more effectually assigning, assuring, and confirming the said part or share and premises hereby assigned, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, and also for enabling him and them to receive, recover, and enforce the payment thereof respectively, to and for their own use and benefit, according to the true intent and meaning of these presents, as by the said [*purchaser*], his executors, administrators, and assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required. IN WITNESS, &c.

OF SHARE IN NEWSPAPER.

ASSIGNMENT *of a Share in a* COMPANY.

OF SHARE IN COMPANY.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. WHEREAS the said [*vendor*] is possessed of or well entitled to the part or share and premises hereinafter described, of and in the stock of the Insurance Company: AND WHEREAS the said [*purchaser*] hath contracted with the said [*vendor*] for the absolute sale to him of the said part or share of him the said [*vendor*], and all benefit and advantages to arise therefrom, free from incumbrances, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] well and truly paid, at or before the sealing and delivery of these presents (the receipt of which said sum he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*vendor*], his executors, administrators, and assigns), HE the said [*ven-*

Parties.

That vendor is possessed of share.

Contract for purchase.

Testatum, whereby in consideration of purchase-money,

vendor assigns,

OF SHARE IN COMPANY.

Premises.

dor] *Hath* bargained, sold, assigned, and set over, *And* by these presents *Doth* bargain, sell, assign, and set over unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT part or share of him the said [*vendor*], numbered , of and in the capital stock and effects of the Insurance Company, *Together* with all profits, benefits, and advantages in any manner to arise therefrom; *And* all the right, &c. (as *ante*, p. 37), *Together* with, &c. (*power to sue*, as ante, p. 38), TO HAVE, HOLD, RECEIVE, AND TAKE the said part or share of him the said [*vendor*], and all and singular other the premises hereby assigned, or intended so to be, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, for his and their absolute use and benefit (*covenants for title*, as ante, p. 38). IN WITNESS, &c.

Habendum to the purchaser absolutely.

OF PATENTS.

ASSIGNMENT *of* THREE PATENTS.

Parties.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. WHEREAS his most excellent Majesty by letters patent under the great seal of Great Britain, bearing date on or about the day of in the year of his reign, *Did* give and grant unto the said [*vendor*], his executors, administrators, and assigns, full power, sole privilege, and authority to make, use, exercise, and vend his the said [*vendor's*] invention of improvements in certain parts of the machinery employed in the roving and spinning of , within that part of the United Kingdom of Great Britain and Ireland, called England, the dominion of Wales, and the town of Berwick-upon-Tweed, for the term of fourteen years, from the date of the said letters patent; AND WHEREAS his said Majesty, by letters patent under the seal appointed by the treaty of union, to be kept and used in Scotland, instead of the great seal thereof bearing date on or about the day of , in the said year of his reign, *Did* give and grant

Recital of letters patent, granting power of making certain articles and vending the same in England.

Letters patent, giving similar privilege as to Scotland.

unto the said [*vendor*], his executors, administrators, and assigns, full power, sole privilege, and authority to make, use, and vend the said invention within that part of the United Kingdom of Great Britain and Ireland, called Scotland, for the space of fourteen years from the date of the said last mentioned letters patent; AND WHEREAS his said Majesty, by letters patent under the great seal of Ireland, bearing date the day of , in the said year of his reign, did give and grant unto the said [*vendor*], his executors, administrators, and assigns, full power, sole privilege, and authority to make, use, exercise, and vend the said invention within Ireland, for the term of fourteen years from the date of the said last mentioned letters patent; AND WHEREAS the said [*vendor*] hath contracted and agreed with the said [*purchaser*], for the absolute sale to him the said [*purchaser*] of the said hereinbefore recited letters patent, and all benefit and advantage to arise therefrom at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds of lawful money of Great Britain, by the said [*purchaser*] to the said [*vendor*] in hand well and truly paid, at or before the sealing and delivery of these presents (the receipt, &c. as *ante*, p. 39), HE the said [*vendor*] *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents doth grant, bargain, sell, assign, and set over unto the said [*purchaser*], his executors, administrators, and assigns, ALL THOSE the said three severally hereinbefore recited letters patent, *Together* with all rights, privileges, powers, authorities, benefits, and advantages whatsoever, incident to or conferred by the said letters patent respectively, *And* all the right, title, interest, property, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*vendor*], in, to, out of, or upon the same letters patent and premises, TO HAVE AND TO HOLD the said letters patent, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, as and for his and their own absolute property, for and during all the residue and remainder which is now to come and unexpired, of the several terms of fourteen years,

Letters patent, giving similar privilege as to Ireland.

Testatum, whereby, in consideration of purchase-money,

vendor assigns

parcels.

Habendum to purchaser absolutely.

Covenants by vendor for title;

OF PATENTS.

granted by the same letters patents as aforesaid, *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, in manner following (that is to say); that for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said [*vendor*], made, done, omitted, committed, or executed, or knowingly or willingly suffered to the contrary; the said hereinbefore recited letters patent, at the time of the sealing and delivering of these presents, are good, and not forfeited, surrendered, assigned, or become void or voidable; *And* that for and notwithstanding any act, deed, matter, or thing as aforesaid, he the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority to assign and assure the said letters patent and premises hereby assigned, or intended so to be, with the appurtenances thereto belonging, unto the said [*purchaser*], his executors, administrators, and assigns, for and during all the residue and remainder of the said terms of fourteen years, in manner aforesaid, and according to the true intent and meaning of these presents; *And further*, that it shall and may be lawful to and for the said [*purchaser*], his executors, administrators, and assigns, from time to time, and at all times hereafter, during the continuance of the said terms of fourteen years, peaceably and quietly to enter into, hold, occupy, possess, and enjoy the same letters patent and premises, and their appurtenances, and to have, receive, and take the issues and profits thereof, for his and their own use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, or demand whatsoever, of or by him the said [*vendor*], his executors or administrators, or any other person or persons lawfully or equitably claiming, or to claim by, from, or under, or in trust for him, them, or any of them, *And* that free and clear, and freely and clearly and absolutely acquitted, released, and for ever discharged, or otherwise, by the said [*vendor*], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other estates, titles, troubles, charges, and incumbrances

that the letters patent are good;

good right to assign,

for quiet enjoyment;

free from incumbrances:

OF PATENTS.

whatsoever, either already or hereafter to be had, made, done, committed, or suffered by the said [*vendor*], his executors or administrators, or by any person or persons lawfully or equitably claiming, or to claim by, from, through, under, or in trust for him, them, or any of them; *And further* that he the [*vendor*], his executors and administrators, and all and every other persons and person having or claiming, or who shall or may have or claim any interest in, to, or out of the said letters patent and premises hereby assigned, or intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for the said [*vendor*], his executors, administrators, and assigns, shall and will, from time to time, and at all times hereafter during the continuance of the said term of fourteen years, upon the request, and at the proper costs and charges of the said [*vendor*], his executors, administrators or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, assignments, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely assigning and assuring of the said letters patent and premises hereby assigned, or intended so to be, and their appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*purchaser*], his executors, administrators, and assigns, or his or their counsel in the law, shall be reasonably advised, devised, and required, so as no such further assurance or assurances contain or imply any further, or other covenant or warranty than against the person or persons who shall be required to make or execute the same, and his and their executors or administrators' acts and deeds, and so as the party or parties, who shall be required to make such further assurance or assurances, be not compelled or compellable to go or travel from his or their respective place or places of abode. IN WITNESS, &c.

and for further assurance.

OF A SHIP.

Bill of Sale *of a* Ship *at Sea* (*a*).

Parties.

That vendor is owner of a ship.

That the ship has been duly registered, as appears by certificate;

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. WHEREAS the said [*vendor*] is the owner of a certain ship or vessel called the , of tons burden; AND WHEREAS the said ship or vessel hath been duly registered, in pursuance of an act of parliament made and passed in the sixth year of the reign of his present majesty king George the Fourth, entituled "An Act for the Registry of British Vessels,"

Bill of sale where necessary.

(*a*) A bill of sale is only necessary where the ship is at sea. When the ship is in port, the proper mode of transfer is by a simple indorsement of it on the certificate of registry, to be signed by the person making the same. A copy should be delivered to the registering officer, who will make an entry of it on the affidavit on which the original certificate was obtained, and in the book of registry, and give notice thereof to the commissioners of the customs; and these ceremonies are all that are requisite. *Richardson* v. *Campbell*, 5 B. & A. 196; and see *Robinson* v. *M'Donnell*, 2 B. & A. 134. But if they are not complied with, there is no remedy at law; nor, unless perhaps in the case of fraud, *Mestaer* v. *Gillespie*, 11 Ves. 621; *Thompson* v. *Smith*, 1 Mad. 406, will equity relieve. *Ex parte Bulteel*, 2 Cox, 243. *Spelt* v. *Lechmere*, 13 Ves. 588. *Hubbard* v. *Johnstone*, 3 Taunt. 220. And where the ship is at sea, this indorsement must be made ten days after the ship comes into port. *Dixon* v. *Ewart*, 3 Meriv. 322.

When the ship is at sea, a delivery of the bill of sale will be equivalent to a delivery of the ship itself. *Atkinson* v. *Maling*, 2 T. R. 462. 6 Geo. IV. c. 110, s. 31. *Walker* v. *Peswick*, 2 Ves. 622. But entries of the bill of sale must be made as before mentioned, and the same notice must be given.

Although it was formerly doubted, it is now settled, that a part of a ship may be sold; *Underwood* v. *Miller*, 1 Taunt. 387; but the quantity of interest sold must be correctly stated in the indorsement.

Property in a ship, peculiar.

The property in a ship is somewhat peculiar; and is not governed by several of the usual rules of equity. Thus a deposit of the docu-

OF A SHIP.

as by the (*b*) certificate of such registry, which is in the words and figures following, (*set out the certificate verbatim,*) will fully appear; AND WHEREAS the said ship or vessel is now at sea, on her voyage from to ; AND WHEREAS the said [*purchaser*] hath contracted with the said [*vendor*] for the absolute purchase of the said ship or vessel, and all benefit to be derived therefrom, free from incumbrances, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, *And* in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his executors, administrators, and assigns), HE the said [*vendor*] *Hath*

that the ship is now at sea.

Contract for purchase.

Testatum, whereby, in consideration of —— *l.*,

vendor assigns

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ments relating to a ship will not alone confer an equitable title. *Taylor* v. *Kinloch*, 1 Stark. 175. Thus, also, the vendor has no equitable lien for the purchase money if not paid; as if the requisites of the registry act be complied with, the title of the purchaser will be good as against all the world. *Ex parte Howton*, 1 Rose, 177.

So if a purchaser pay his money without taking the proper transfer of the ship in the mode prescribed by the acts, he can have no remedy, either at law, or in equity. *Camden and others* v. *Anderson*, 5 T. R. 709. *Hilbert* v. *Rolleston*, 3 B. C. C. 571. *Mestaere* v. *Gillespie*, 11 Ves. 625.

See further, as to the transfer of property in ships, title MORTGAGE, and note there.

(*b*) By the 6 Geo. IV. c. 110, s. 31, it is enacted, that when the property in any ship or vessel belonging to his Majesty's subjects shall be sold to any other of his Majesty's subjects, in whole or in part, it shall be transferred by bill of sale or other instrument in writing, reciting the certificate of the registry of such ship or vessel, or the principal contents thereof; and that otherwise such transfer shall not be valid or effectual for any purpose whatever, either at law or in equity. The above recital is therefore necessary. And see *Westerdell* v. *Dale*, 7 T. R. 306. Under the former acts it was held that an error in the re-

Recital of certificate.

OF A SHIP.

bargained, sold, and assigned, *And* by these presents *Doth* bargain, sell, and assign unto the said [*purchaser*], his

premises.

executors, administrators, and assigns, ALL THAT ship or vessel called the , whereof is now master, and which is now on a voyage from to , *Together* with all masts, sails, rigging, cannon, firearms, ammunition, tackle, provisions, boats, oars, furniture, and appurtenances thereto in anywise belonging; *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*vendor*], of, in, to, or out of the said ship or vessel hereby assigned,

Habendum to purchaser absolutely.

or intended so to be. TO HAVE AND TO HOLD the said ship or vessel, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [*purchaser*], his executors and assigns, to and for his and their absolute use and benefit; *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, that for and notwithstanding any act, deed, matter, or thing by him the said [*vendor*] made, done, omitted, committed, or knowingly or willingly suffered or executed to the contrary, he the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority to bargain, sell, and assign the said ship or vessel and premises hereby assigned, or intended so to be, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: *And* that it shall and may be lawful for the said [*purchaser*], his heirs and assigns, from time to time, and

Covenants for title;

good right to assign;

and for quiet enjoyment;

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cital vitiated the deed, see *Brewster* v. *Clarke*, 2 Mer. 75; *Thompson* v. *Leake*, 1 Mad. 39; but it is expressly declared by the late act, 6 Geo. IV. c. 110, s. 31, that provided the identity of the ship or vessel therein included shall be effectually proved thereby, any error in the recital shall not avoid the bill of sale.

The certificate had better always be recited verbatim, as above: and this will be equally necessary in an agreement for the sale of a ship, or in the assignment itself. *Biddell* v. *Leeder*, 1 B. & C. 327.

at all times hereafter, peaceably and quietly to enter into, hold, occupy, possess, and enjoy the said ship or vessel and premises hereby assigned, or intended so to be, with the appurtenances, and to have, receive, and take the profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by him the said [*vendor*], his executors, administrators, and assigns, or of, from, or by any other person or persons whomsoever, lawfully or equitably claiming, or to claim by, from, or under, or in trust for him, them, or any of them; *And* that free and clear, and freely and clearly and absolutely acquitted, released, exonerated, and for ever discharged or otherwise, by the said [*vendor*], his heirs, executors, and assigns, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, wills, mortgages, statutes merchant or of the staple, recognizances, judgments, annuities, legacies, sums of money, yearly payments, forfeitures, cause and causes of forfeiture, debts of record, debts due to the King's majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered by the said [*vendor*], or his executors or administrators, or by any person or persons lawfully or equitably claiming or to claim, by, from, or under, or in trust for him, them, or any of them, or by his or their acts, means, defaults, or procurements; *And further*, that he the said [*vendor*], and his executors and administrators, and all and every other person or persons having or claiming, or who shall or may hereafter have or claim, any estate, right, title, interest, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said ship or vessel and premises hereby assigned, or intended so to be, with their appurtenances, or any of them, or any part thereof, by, from, or under, or in trust for him the said [*vendor*], or his executors or administrators, shall and will from time to time, and at all times hereafter, upon every

free from incumbrances;

and for further assurance.

OF A SHIP.

reasonable request to be made for that purpose, by and at the proper costs and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, assignments, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning and assuring of the said ship or vessel and premises, hereby assigned, or intended so to be, and every part thereof, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised, devised, and required. IN WITNESS, &c. (*c*)

Stamp.

(*c*) A bill of sale, or other instrument for the disposition, either absolutely, or by way of mortgage, or otherwise, of any ship or vessel, or any part thereof, or property therein, does not require any stamp. 6 Geo. IV. c. 41.

BILL OF SALE *of* GOODS *and* FURNITURE *in a House.* GOODS AND FURNITURE.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the one part; and [*purchaser*] of, &c. of the other part. WHEREAS the said [*vendor*] hath contracted and agreed with the said [*purchaser*] for the absolute sale to him of the goods, chattels, furniture and effects mentioned and described in the schedule hereinunder written, or hereunto annexed, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration (*consideration and receipt, as ante*, p. 39), HE the said [*vendor*] *Hath* bargained and sold, and by these presents *Doth* bargain and sell, unto the said [*purchaser*], his executors, administrators, and assigns, ALL the furniture, linen, china, glass, books, wines, liquors, pictures, beds and bedding, furniture, goods, chattels, and effects, mentioned and described in the schedule hereunder written, or hereunto annexed; Together with all advantages, privileges, and emoluments to arise therefrom, or thereunto in anywise appertaining, TO HAVE, HOLD, RECEIVE, AND TAKE the said goods, chattels, furniture and effects, and all and singular other the premises hereby bargained and sold, or intended so to be, with their appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, for his and their absolute use and benefit. *And* the said [*vendor*], doth hereby for himself, &c. (*covenant for title, as ante*, p. 46, *varying the reference to the parcels, to* "goods, chattels, furniture, and effects hereby assigned, or intended so to be.") IN WITNESS, &c.

Parties.

Contract for purchase;

Testatum, whereby in consideration of purchase money vendor assigns

parcels;

Habendum to purchaser.

BE IT REMEMBERED, that on the day of , a delivery was made by the within mentioned [*vendor*],

Memorandum of delivery, to

OF GOODS AND FURNITURE.

be indorsed on the deed.

to the within mentioned [*purchaser*], of the goods, chattels, furniture, and effects within mentioned or referred to, a chair being delivered to the said [*purchaser*], in the name of the whole (*a*).

Actual delivery;

(*a*) On a purchase of goods and chattels, an actual delivery must be made to the purchaser, of some part of them; *Edwards* v. *Harben*, 2 T. R. 587; *Dutton* v. *Morrison*, 17 Ves. 197; *Steele* v. *Brown*, 1 Taunt. 381; *Wordall* v. *Smith*, 1 Camp. 333, or the bargain and sale will not be good against creditors. And if this ceremony be complied with, a deed or writing is not necessary, and is therefore very seldom employed.

ASSIGNMENT OF TERM TO ATTEND.

Assignment *of a* Term (*a*) of Years *to attend the* Inheritance (*simple form*).

Parties.

THIS INDENTURE, made the day of , Between [Z. Z.] of, &c. [*trustee of term for vendor*], of the first part; [*vendor*] of, &c. of the second part;

Terms in gross.

Terms to attend.

(*a*) Terms for years are either terms in gross, or terms to attend the inheritance. Terms in gross are terms which are vested in trustees for the use of particular persons, and for particular purposes. Terms to attend the inheritance are terms which are assigned to a third person, in trust for the owner of the inheritance; and here the trust or beneficial interest of such a term will attend all such conveyances, assurances, or charges, as the owner creates of the inheritance, and will follow all its modifications. But as this takes place by a mere equitable construction, and as the legal interest in the term is always separate from the inheritance, the owner may defend himself at law by the help of his term against all mesne incumbrances. *Willoughby* v. *Willoughby*, 1 T. R. 763. And although an express declaration that the term shall attend is usual, yet it is not necessary; as if a satisfied term is assigned to a third person in trust for the owner of the inheritance,

ASSIGNMENT OF TERM TO ATTEND.

[*purchaser*] of, &c. of the third part; and [Y. Y.] of, &c. [*trustee of term for purchaser*], of the fourth part. WHEREAS(*b*) by an indenture bearing date on or about the day of , and made, or expressed to be made between [A. B.] (therein described) of the one part, and [C. D.] (therein described) of the other part, the pieces or parcels of land, hereditaments and premises, hereinafter described, and intended to be hereby assigned, with their appurtenances, were demised by the said [A. B.] unto the said [C. D.], his executors, administrators and assigns, for the term of years from thence next ensuing, for certain purposes in the said indenture mentioned, and which have now long since been fully performed, or otherwise satisfied; AND WHEREAS after divers mesne conveyances and assurances in the law, and ultimately by indentures of lease and release, bearing date respectively on or about the and days of ,

Recital of indenture, whereby the term was created;

that by divers mesne conveyances, and ultimately by indentures of &c. the reversion of the

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it will attend by implication of law. *North* v. *Crompton*, 3 Cha. Ca. 196. *Huntingdon* v. *Huntingdon*, 2 B. P. C. 1. *Whitchurch* v. *Whitchurch*, 2 P. Wms. 236. It is now clear, that if a purchaser obtains an assignment of a term created *bonâ fide* previously to the accruer of the right of dower, it will be a bar to the dower of the vendor's wife, even although he has notice of such dower; *Mole* v. *Smith*, 1 Jac. 490; so that this important practical rule may be laid down,—that where a purchaser can procure an assignment of such a term, on which no doubt as to merger rests, a fine is not necessary. And see also *Radnor* v. *Vandebendy*, Show. Parl. Ca. Prec. Cha. 65. *Swannock* v. *Lyford*, Ambl. 6. But where a term has not been assigned to attend the inheritance for a purchaser, a trust term outstanding in a trustee, although it had formerly been assigned to attend, will not protect against a claim of dower. *Maundrell* v. *Maundrell*, 7 Ves. 567; 10 Ves. 246. But a court of equity will compel a trustee of a term outstanding and

Where it will protect a purchaser against a title of dower;

(*b*) Where a term has been once assigned to attend the inheritance, it is merely necessary, in a future assignment of it, to introduce the recitals given above; but where a term has never been assigned, it will be proper to recite the deed creating the term, and then all the deeds and instruments affecting the fee, since the creation of the term. See Sug. Vend. 454.

Necessary recitals.

ASSIGNMENT OF TERM TO ATTEND.

the release being made, or expressed to be made between [M. M.] of the first part, [N. N.] of the second part, and [*vendor*] of the third part; the inheritance in fee simple in remainder or reversion, immediately expectant on the determination of the said term of

premises were conveyed to vendor;

years, of and in the said pieces or parcels of land, hereditaments, and premises, hereinafter described, and intended to be hereby assigned, and their appurtenances, were for the considerations in the said indenture of release mentioned, conveyed by the said [M. M.] and [N. N.], to the use of the said [*vendor*], his heirs and assigns for ever; AND WHEREAS by divers mesne assignments, assurances, and other acts in the law, and particularly by an indenture bearing date on or about the day of , and made, or expressed to be made between [B. B.], (therein described) of the first part; the said [M. M.], of the second part; the said [N. N.] of the third part; the said

that by divers mesne assignments and by indenture of, &c. term was assigned to vendor's trustees.

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attendant upon the inheritance, to assign it to a purchaser from the husband, in order to bar the wife's right of dower, even although the wife is herself the trustee. *Mole* v. *Smith*, 1 Jac. 491; 1 Jac. & Walk. 665, S. C. And where a term is satisfied, and becomes attendant upon the inheritance of a vendor, it will not protect a purchaser from an extent for a crown-debt. *The King* v. *Smith*, 2 Pri. 317. But if the term be not satisfied until after the lien of the crown-debt has attached, it will protect a subsequent purchaser, for whose benefit the term has been assigned, and who denies notice of the king's lien. *The King* v. *Lambe*, M'Clell. 402. This case has established a very important principle, and deserves great consideration; but as it is reported at great length, it is not given here more fully.

Where against an extent.

When assignment of terms should be by a separate deed.

Although outstanding terms are frequently assigned to attend the inheritance in the same deed by which the inheritance is conveyed, yet the most correct mode, when notice of the term need not appear on the face of the conveyance, is to assign it by a separate deed, and then an ejectment may be maintained by the trustee without the necessity of the vendor exhibiting his title to the inheritance; or the purchaser may maintain an ejectment in the absence of the trustee, if no notice of the term appear on the conveyance. *Goodtitle* v. *Jones*, 7 T. R. 47.

What terms should be as-

All terms should be assigned on a purchase, and the oldest terms should, of course, be assigned to attend, as these are less likely to be

[*vendor*] of the fourth part; and [Z. Z.] of the fifth part; the said pieces and parcels of land, hereditaments, and premises, hereinafter described, and intended to be hereby assigned, and their appurtenances, were (for the considerations in the said indenture now in recital mentioned) assigned by the said [B. B.] to the said [Z. Z.], for the then residue and remainder of the said term of years, created therein as aforesaid, *In trust* for the said [*vendor*], his heirs and assigns, and to attend the inheritance. AND WHEREAS by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made, or expressed to be made, between the said [*vendor*] of the first part; the said [*purchaser*] of the second part; and [*trustee to bar dower*], (therein described), of the third part; the inheritance in fee simple in remainder or reversion, immediately expectant on

ASSIGNMENT OF TERM TO ATTEND.

Indentures, whereby the reversion of the premises have been conveyed to purchaser;

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affected by incumbrances; and the subsequent terms should be merged in the inheritance. Where the state of the title renders it proper that two or more should be kept on foot, one term should be assigned to one trustee, and the other to another; and if more than two are assigned, in order to prevent their merging in each other, every alternate term as the first, third, and fifth, may be assigned to one trustee, and the second, fourth, and sixth to another trustee. See 2 Prest. Conv. 127—129: and *Scott* v. *Fenhoulet*, 1 B. C. C. 69. The term or terms to be assigned must of course be legal terms, as equitable terms will afford no protection. If a term has once been assigned to attend the inheritance, and a purchaser require it to be assigned for his benefit, the assignment must be at his expense; but if it has never been assigned, then the assignment must be at the vendor's expense. Mr. Butler has noticed the few instances in which it is prudent to dispense with an assignment of a term; Co. Litt. 290, b. n. (1), s. 13; but even in these, perhaps, it is the more usual practice to take an actual assignment. And it is to be observed, that even an express declaration of trust in favor of a purchaser, to which the trustees are parties, is not for all purposes equivalent to an assignment in protecting against the fraudulent acts of a vendor or mortgagor. See *Frere* v. *Moore*, 8 Pri. 475.

signed to attend.

Expenses of assignment;

It is proper here to notice some late cases on the subject of surrenders of terms. The opinion and general practice of conveyancers was certainly against presuming the surrender at any distance of time;

Surrender of terms.

ASSIGNMENT OF TERM TO ATTEND.

the determination of the said term of years of and in the said pieces or parcels of land, hereditaments and premises, hereinafter described, and intended to be hereby assigned, and their appurtenances, have (for the considerations in the said indenture of release mentioned) been conveyed by the said [*vendor*] to the said [*purchaser*], to such uses, &c. (*uses to bar dower, see recital*, Vol. VI. p. 285) : AND WHEREAS it hath been agreed that the said [Z. Z.] should assign the said pieces or parcels of land, hereditaments and premises, with the appurtenances, unto the said [Y. Y.], for the residue and remainder of the said term of years, upon the trusts, and in the manner hereinafter mentioned NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of the sum of ten shillings, of lawful money of Great Britain and Ireland, by the said [Y. Y.], to the said [Z. Z.] paid, at or immediately before the sealing and delivering of these

Agreement to assign the term to trustee for purchaser.

Testatum, whereby

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the reasons of which are stated in Mr. Sugden's well known Tract on the subject, which has since been transferred to his Treatise on Vendors, 7th ed. But it is now quite clear, although there are many former cases, and some recent *dicta* of authority against it, that a term will be presumed to have been surrendered at common law, if there has not been some dealing with it, on the last purchaser's mortgage or settlement. *Doe* v. *Hilder*, 2 B. & A. 787. The same rule was laid down in *Bartlett* v. *Downes*, 3 B. & C. 616 ; 5 Dow. & Ry. 526, S. C.; and in *Townshend* v. *Champernown*, 1 M'Clell. & Yo. And the same principles have been also lately acted upon in courts of equity. Thus where a question was raised on a title, whether a term for raising portions, created in 1711, ought not to be presumed to have been surrendered, although there was no evidence of the portions having been paid, yet as the family had all along dealt with the estate as if there was no term and no portions due, it was held, that the term must be presumed to have been surrendered. *Emery* v. *Grocock*, 6 Madd. 54. *Exparte Holman*, Sug. Vend. 428. *Cook* v. *Soltau*, 2 Sim. & Stu. 154.

Presumption of conveyance of legal fee.

And the same inclination to presume the conveyance of the legal estate in fee, prevails in the courts of common law. See *England* v. *Slade*, 4 T .R. 682, where such a conveyance was presumed after 20 years had elapsed. And see also *Doe* v. *Sybourn*, 7 T. R. 2; and this principle has also to a certain extent been recognized in equity. *Hillary* v. *Waller*, 12 Ves. 239.

presents, (the receipt whereof is hereby acknowledged) HE the said [*Z. Z.*], at the request, and by the direction of the said [*vendor*], and upon the nomination of the said [*purchaser*], (testified by their respectively being parties to the sealing and delivering these presents, *Hath* bargained, sold, and assigned, *And* by these presents doth bargain, sell, and assign unto the said [Y. Y.], his executors, administrators, and assigns, ALL, &c. (*the parcels*), *Together* with, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said pieces or parcels of land, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [Y. Y.], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of years, created therein by the said hereinbefore recited indenture of the day of as aforesaid, *In trust* nevertheless for the [*purchaser*], his heirs and assigns, and to assign and dispose of the same as he or they shall from time to time order and direct, *And* in the mean time, in trust to permit the same term to wait upon and attend the reversion, freehold, and inheritance of the said pieces or parcels of land, hereditaments, and premises, hereby assigned, or intended so to be, with their appurtenances, and to protect the same from all mesne incumbrances, if any such there be; *And* the said [*Z. Z.*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [Y. Y.], his executors, administrators, and assigns, that he the said [Z. Z.] hath not at any time heretofore made, done, omitted, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said pieces or parcels of land, hereditaments, and premises, hereby assigned, or intended so to be, or any of them, or any part thereof, or the said hereinbefore mentioned term of years, created therein as aforesaid, are, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered. IN WITNESS, &c.

ASSIGNMENT OF TERM TO ATTEND.

trustee assigns term to trustee for purchaser;

Habendum, for the residue of the term;

in trust to attend the inheritance for the benefit of the purchaser;

Covenant by trustee against incumbrances.

ASSIGNMENT OF A TERM, PARTLY TO ATTEND AND PARTLY TO MERGE.

ASSIGNMENT *of a* TERM *as to such part of the Premises comprised therein, as are contracted to be* SOLD, *to* ATTEND *the Inheritance; and as to such as are* NOT *to be sold, to* MERGE.

Parties.

THIS INDENTURE, made the day of , BETWEEN [*trustee of term*] of, &c. of the first part; [*vendor*] of, &c. of the second part; [*purchaser*] of, &c. of the third part; and [A. B.] of, &c. [*trustee of term for purchaser*], of the fourth part. WHEREAS by an indenture bearing date on or about the day of , and made, or expressed to be made between [B. B.] of, &c. of the one part, and [C. C.] of the other part; the manor or lordship, messuages or tenements, farms, lands, and hereditaments, described in the two several schedules hereunder written or hereunto annexed, with the appurtenances, were demised by the said [B. B.] unto the said [C. C.], his executors, administrators, and assigns, for the term of years, from thence next ensuing, for certain purposes in the said indenture mentioned, and which have long since been fully performed or otherwise satisfied. (*that by divers mesne conveyances, and ultimately by indenture of the, &c. the reversion has been conveyed to vendor—and that by divers mesne assignments, the term has been assigned to trustee, as ante,* p. 51, 52); AND WHEREAS, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made, or expressed to be made, between the said [*vendor*], of the first part; the said [*purchaser*], of the second part; and [*trustee to bar dower*], (therein described), of the third part; the inheritance in fee simple in remainder or reversion immediately expectant on the determination of the said term, of so much and such part of the said manor or lordship, messuages or tenements, farms, lands, heredi-

Recital of indenture creating the term.

Indentures of lease and release, whereby the reversion of the premises is conveyed to the purchaser, to uses to bar dower.

ASSIGNMENT OF A TERM, PARTLY TO ATTEND AND PARTLY TO MERGE.

taments, and premises as are described in the first schedule hereunder written, or hereunto annexed, with the appurtenances, have (for the considerations in the said indenture of release mentioned) been conveyed by the said [*vendor*] to the said [*purchaser*], to such uses, &c. (*uses to bar dower, see recital,* Vol. VI. p. 285); AND WHEREAS it hath been agreed that the said [*trustee*] should assign so much and such part of the said manor or lordship, messuages or tenements, farms, lands, hereditaments, and premises as are described in the first schedule, hereunder written, or hereunto annexed, with the appurtenances, unto the said [A. B.], for the residue and remainder of the said term of years, upon the trusts, and in the manner hereinafter mentioned; *And* that the said [*trustee*] should assign so much, and such part of the said manor or lordship, messuages or tenements, farms, lands, hereditaments, and premises as are described in the second schedule, hereunder written, or hereunto annexed, unto the said [*vendor*], for the residue and remainder of the said term of years, in order that the same may merge in the freehold and inheritance of the same hereditaments and premises: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, *And* also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [A. B.] to the said [*trustee*] paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), HE the said [*trustee*], at the request, and by the direction of the said [*vendor*], and on the nomination of the said [*purchaser*], (testified by their severally being parties to these presents,) *Hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* bargain, sell, assign, transfer, and set over, unto the said [A. B.], his executors, administrators, and assigns, ALL such, and so many and such part and parts of the manor or lordship, messuages, or tenements, hereditaments, and premises, by the said indenture of limited to the said [C. C.], his executors, administrators, and assigns, for the term of years therein mentioned, as are comprised in, and described by the first schedule hereunder written, or hereunto annexed,

Agreement to assign premises in first schedule comprised in the term, to attend for purchaser;

and premises in second schedule to vendor to merge;

Testatum, whereby premises in first schedule are assigned;

ASSIGNMENT OF A TERM, PARTLY TO ATTEND AND PARTLY TO MERGE.

with their appurtenances; *And* all the estate, &c. of him the said [*trustee*], To HAVE AND TO HOLD the said manor or lordship, messuages, or tenements, farms, lands, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, with their rights, members, and appurtenances, unto the said [A. B.], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of years, created by the said indenture of , as aforesaid, *In trust*, to assign and dispose of the same, in such manner as the said [*purchaser*], his heirs or assigns, shall direct or appoint, and in the mean time *Upon trust*, to permit the said term of years to wait upon and attend the freehold and inheritance of the said manor or lordship, messuages or tenements, lands, hereditaments, and premises hereby assigned, or intended so to be, with the appurtenances (*covenant by trustee of term with* [*A. B.*], *that he has not incumbered*);

Habendum, to A. B. in trust to attend the inheritance.

Further testatum, whereby premises in second schedule are assigned to vendor, to merge.

AND THIS INDENTURE ALSO WITNESSETH, *That* in pursuance and further performance of the said agreement, and for the consideration hereinbefore mentioned, *And* in consideration of the sum of ten shillings of like lawful money by the said [*vendor*] to the said [*trustee*] paid, at or immediately, &c. (the receipt, &c.) HE the said [*trustee*], at the request, and by the direction of the said [*vendor*], and upon the acceptance of the said [*vendor*] (testified as hereinbefore is mentioned), *Hath* bargained, sold, assigned, and surrendered, *And* by these presents, &c. unto the said [*vendor*], his heirs and assigns, ALL such and so many and such part and parts of the said manor or lordship, lands, hereditaments, and premises as are comprised in, and described by the second schedule hereunder written, or hereunto annexed, with the appurtenances, *And* all the estate, &c. *To the end and intent* that the residue which is now to come and unexpired, of the said last mentioned term of years, may immediately merge in and be consolidated with the said manor and other hereditaments. (*Covenant by trustee with vendor against incumbrances, as ante*, p. 55). IN WITNESS, &c.

ASSIGNMENT *of a* TERM *in order that it may Merge in a* REVERSIONARY TERM (*a*).

OF TERM TO MERGE IN TERM.

THIS INDENTURE, made the day of , BETWEEN [A. B.] (*trustee of term*) of, &c. of the first part; [*vendor*] of, &c. of the second part; [*purchaser*] of, &c, of the third part; and [C. D.] [*trustee of reversionary term*] of, &c. of the fourth part. (*Recite indentures creating both the terms, see ante,* p. 51; *that they have been assigned to several trustees for vendor—conveyance of premises to purchaser, as ante,* p. 52, 53). AND WHEREAS it hath been agreed, that the said [A. B.] should assign the said term of one thousand years, created by the said indenture of the day of , as aforesaid, unto the said [C. D.], in order that it may merge in the reversionary term of one thousand years, created by the said indenture of the day of as aforesaid. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of ten shillings, of lawful money of Great Britain and Ireland, by the said [C. D.] to the said [A. B.] paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), HE the said [A. B.] (with the privity, consent, and approbation of the said [*vendor*] and [*purchaser*], (testified by their respectively being parties to, and sealing and delivering these presents), *Hath* bargained, sold, assigned, and surrendered, *And* by these presents *Doth* bargain, sell, assign, and surrender unto the said [C. D.], his executors, administrators, and assigns, The messuages or tenements, lands, hereditaments, and premises com-

Parties.

Recitals.

Agreement for the assignment of a term of 1000 years to the end, that it may merge in a reversionary term of 1000 years.

Testatum whereby term is assigned to trustee.

(*a*) That one term of years may merge in another, is now clear. *Hughes* v. *Robotham,* Cro. Eliz. 302; Bac. Abr. Leases, S. s. 2. *Stevens* v. *Bridges,* V. C. 1821; Sug. Vend. 397.

One term of years may merge in another.

OF TERM TO MERGE IN TERM.

prised in, and demised by the said hereinbefore recited indenture of the day of , for the said term of one thousand years; *And all* the estate, &c. *To the end and intent* that the said term of one thousand years may become merged and extinguished in the said reversionary term of one thousand years, for which the said messuages or tenements, hereditaments, and premises are limited by the hereinbefore recited indenture of the day of , to the use of the said [C. D.], his executors, administrators, and assigns, as aforesaid; (*covenant by* [*A. B.*] *with* [*C. D.*] *that he has not incumbered, see ante*, p. 55). In witness, &c.

To the intent that it may merge.

COVENANT TO PRODUCE TITLE DEEDS.

Covenant *to produce* Title Deeds (*a*).

Parties.

Recital of the conveyance to the purchaser.

This indenture, made the day of , Between [*vendor*] of, &c. of the one part; and [*purchaser*] of, &c. of the other part; Whereas, by indenture of lease and release, the lease bearing date the day next before the release, and the release bearing even date with these presents, and made, or expressed to be made, between the said [*vendor*] of the first part; the said [*pur-*

Separate deed.

(*a*) As the schedule usually annexed to covenants for the production of deeds, will afford notice of all the deeds mentioned therein, and may possibly lead to inquiries after old deeds, it is always better to enter into this covenant by a separate deed; as if the purchaser should afterwards acquire possession of the deeds, he may suppress the deed of covenant, and thus prevent useless enquiries.

Persons entitled to the possession of the deeds.

If the title deeds come into the possession of a person possessed of any part of the land, however small, he is entitled to retain them. *Field* v. *Yea*, 2 T. R. 708; *Fairfax* v. *Hussey*, Vin. Abr. tit. Fait (*z*),

chaser], of the second part; and [*releasee to uses*], of the third part; a certain messuage or tenement called , and situate and being in the parish of , in the county of , and three acres of land thereto adjoining, in the said indenture more particularly described, and their appurtenances, have (for the considerations in the said indenture of release mentioned) been conveyed by the said [*vendor*] unto and to the use of the said [*purchaser*], his heirs and assigns for ever. AND WHEREAS the several deeds, muniments, and evidences of title, described in the schedule hereunder written, relate not only to the said messuage or tenement called , and the land thereto adjoining, with the appurtenances, but also to other hereditaments and premises situate at, &c. to which the said [*vendor*] is seised or entitled. AND WHEREAS it hath been agreed that the said deeds, muniments, and evidences of title, shall be and remain in the custody of the said [*vendor*], and that the said [*vendor*] shall covenant with

COVENANT TO PRODUCE TITLE DEEDS.

That the deeds relate to other lands.

Agreement for purchaser to retain them.

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pl. 15; except when there has been an agreement between two persons, that a bailee shall keep a deed for them; as, in this case, on its coming into possession of either of them, he will not be entitled to retain it; *May* v. *Harvey*, 13 East, 197; unless the agreement has been altered by subsequent declarations, 7 J. B. Moo. 304. But the court will not order delivery of the deeds to be made to a termor, however long his term may be. *Wiseman* v. *Westland*, 1 Yo. & Jer. 117, and Vol. VI. 251; nor has a person entitled to a rent charge out of the lands, any title to the production of the deeds. 1 Ves. sen. 394; 1 Bing. 45; 4 Madd. 138. And see further, as to who is entitled to possession of deeds, 1 Byth. 161, Stewart's edit.

Production of deeds.

Where part of an estate is sold, although there is no covenant for their production, yet if the deeds are not delivered, the purchaser will be entitled, as against his vendor, to have them produced. *Fain* v. *Ayres*, 2 Sim. & Stu. 533; *Shore* v. *Collett*, Geo. Coop. 237; *Lambert* v. *Rogers*, 2 Meriv. 489; *Wright* v. *Plumtree*, 3 Madd. 481.

So also tenants in common, coparceners, and joint tenants, will, either before or after partition, be entitled to the production of title deeds, as against each other. *Shore* v. *Collett*, *ubi supra*; *Wright* v. *Plumtree*, *ubi supra*; but where a tenant in common had sold his share, and was in possession of the title deeds as mortgagee to the purchaser,

COVENANT TO PRODUCE TITLE DEEDS.

the said [*purchaser*] for the production and preservation thereof, in such manner as hereinafter is mentioned. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, HE the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that he the said [*vendor*], his heirs and assigns, shall and will, from time to time and at all times hereafter, unless prevented by fire or other inevitable accident, upon every reasonable request in writing, and at the expense of the said [*purchaser*], his heirs and assigns, produce and shew forth in any part of the united kingdom of Great Britain and Ireland, unto the said [*purchaser*], his heirs, executors, administrators, and assigns, or to his or their counsel, attorneys, or agents, at or upon any trial, hearing, commission, or examination, in any competent court or courts of judicature, or to any arbitrator or umpire lawfully appointed, or otherwise, as occasion shall require,

Testatum, whereby

vendor covenants to produce them.

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it was held that the obligation as tenant in common no longer subsisted, and that a mortgagee had no right to shew a mortgagor's title. *Lambert* v. *Rogers, ubi supra.* For it is a settled rule, that purchasers for a valuable consideration, and mortgagees, are not bound to discover their title deeds, if they deny notice. *Perrat* v. *Ballard,* 2 Ch. Ca. 73; *Chandos* v. *Brownlow,* 2 Ridg. P. C. 422; 1 Madd. Cha. 225; 2 Madd. Cha. 390, 2d edit.; *Harris* v. *Hill,* 3 Stark. 140; 1 Dow. & Ry. 17, S. C.; *Barclay* v. *Raine,* 1 Sim. & Stu. 449; *Vansittart* v. *Barber,* 9 Pri. 641.

And it would seem by the case of *Fain* v. *Ayres,* 2 Sim. & Stu. 533, that a purchaser might compel a vendor, under his covenant for further assurance, to enter into a covenant for the production of title deeds; but this has very lately been decided otherwise by the present Vice-Chancellor.

Covenant to produce title deeds.

When, therefore, the deeds are not delivered to a purchaser, it is the invariable practice to make the vendor covenant for their production; and this rule extends to all vendors, whether assignees of bankrupts or otherwise. *Exparte Stewart,* 2 Rose, 215. And a purchaser cannot be compelled to complete his purchase, unless the title deeds are delivered to him, or he has a covenant for their production, on which he can maintain an action at law; *Barclay* v. *Raine,* 1 Sim. and Stu. 449;

COVENANT TO PRODUCE TITLE DEEDS.

to be by him or them then and there respectively proved, pleaded, and given in evidence, or otherwise reasonably employed, all, every, or any of the deeds, instruments, or writings, which are specified in the schedule thereof, hereunder written, for the manifestation, support, and defence of the estate, title, and possession of the said [*purchaser*], his heirs or assigns, to the said messuage or tenement called , and the land thereto adjoining, conveyed or intended to be conveyed to the said [*purchaser*], his heirs and assigns, by the said hereinbefore recited indenture, as aforesaid, with the appurtenances, *And* at the like request, costs, and charges, make and deliver, or cause to be made and delivered, true and attested and other copies or copy, abstract or abstracts, of the same deeds, instruments, and writings respectively, or any of them; *And* permit and suffer, or cause and procure such copies or abstracts to be compared with the original deeds, either by the said [*purchaser*], his heirs or assigns, or by such person and persons as he or they shall from time to time for

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as a mere right in equity to enforce their production will not be sufficient. *Shore* v. *Collett*, Geo. Coop. 284. A covenant for the production of deeds is a real covenant, 4 Cru. Dig. 423, 3d edit.; but although it runs with the land of the covenantee, for the benefit of those claiming under him, *Twynam* v. *Pickard*, 2 B. & A. 105; it does not run with the land of the covenantor, in respect of which the deeds remained in his custody, and will not impose any obligation on any subsequent owner of the lands, to produce them. *Barclay* v. *Raine*, *ubi supra*. A fresh covenant, therefore, should be entered into by every subsequent owner of the lands; and a vendor who has covenanted to produce the deeds, should be careful in obtaining a similar covenant from the person to whom he delivers them, whether purchaser or mortgagee; as, if they are not produced, he will, of course, be liable to an action for damages on his covenant.

Expenses. Attested copies.

The expense of the covenant for the production of title deeds should be borne by the vendor; *Berry* v. *Young*, 2 Esp. 640 n.; and attested copies of all the deeds and writings of the vendor relating to the title, should also be delivered to the purchaser, at the like expense of the vendor; *Dare* v. *Tucker*, 6 Ves. 460; but it would seem he is not entitled to attested copies of instruments on record; *Campbell* v. *Campbell*,

COVENANT TO PRODUCE TITLE DEEDS.

that purpose direct. PROVIDED NEVERTHELESS, and it is hereby agreed and declared between and by the parties hereto, that if the said hereditaments and premises to which the said deeds, instruments, and writings respectively refer, shall hereafter be sold or otherwise absolutely disposed of; and the said [*vendor*] shall procure the purchaser or purchasers thereof, to enter into a like covenant to that which is hereinbefore contained, with the said [*purchaser*], his heirs and assigns, for the production of the said deeds, instruments, and writings, to him and them; then and in that case, the covenant and agreement hereinbefore contained for that purpose, shall from thenceforth cease and be void. *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*purchaser*], his heirs and assigns, that until such sale as last aforesaid, he

Proviso that if a similar covenant shall be obtained, the present covenant shall be void.

Sug. Vend. 447; as of fines or recoveries; nor is he entitled, it would seem, to copies of inclosure awards, wills, or other documents which are deposited in public registries.

Stamps on attested copies.

The duty payable on an attested copy, declared to be a true copy, or made for the purpose of being given in evidence of any agreement, contract, bond, deed, or other instrument of conveyance, or any other deed whatsoever, together with any schedule, recital, or other matter indorsed thereon or annexed thereto, or of any part thereof respectively, when made for the security or use of any person being a party to, or taking any benefit or interest immediately under such agreement, &c. is the same as on the original instrument.

When made for the security or use of any person *not* a party, or not taking any benefit or interest immediately under such agreement, &c. a duty of one shilling; and for every 720 words above the first 720, a further progressive duty of one shilling.

All copies which shall at any time be offered in evidence, shall be deemed to have been made for that purpose.

Exemptions.

From these and all other stamp duties, are exempted all attested copies, made for the private use only of any person having the custody of the original deeds, or of his counsel, attorney, or solicitor. 55 Geo. III. c. 114, sched. part I.

But copies of deeds read in evidence as copies, do not require any stamp; *Munn* v. *Godbold*, 3 Bing. 292; 11 J. B. Moo. 49, S. C.;

the said [*vendor*], his heirs, executors, administrators, and assigns, shall and will in the mean time use and take, and cause to be used and taken, all due and proper care to preserve and keep the same deeds, instruments, and writings, from being defaced, injured, cancelled, lost, or destroyed. IN WITNESS, &c. (*a*)

COVENANT TO PRODUCE TITLE DEEDS.

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but such copies, of course, must not have been made for the purpose of being given in evidence.

(*a*) For other covenants for the production of deeds, and for covenants for getting in outstanding terms, see title COVENANT; and for covenants to indemnify against the payment of legacies and other charges, see title INDEMNITY; and see covenant to procure assignment of term, 1 Byth. 124, Stewart's edit.

Reference to other covenants.

RECOVERIES.

I. RECOVERIES.
II. RECOVERY DEEDS.

I. Recoveries.

The mode of suffering them—What necessary to—Demandant—Tenant—Writ—Voucher—Judgment—Execution—In what Courts they may be suffered—Who may and who may not suffer—I. *In respect of their Estates*—II. *In respect of their Personal Disabilities—Death of Parties in the progress thereof—As to what Property may be the subject of Recovery—Effect of a Recovery—As to Amending Recoveries—As to reversing them by Writs of Error—For what Error may be brought—By whom it may be brought—Where Recovery should be reversed—Other Points relating to the Reversal of Recoveries—Miscellaneous Points.*

Origin of recoveries.

The origin of common recoveries is well known. The statutes of mortmain having prohibited the gift or purchase of lands to or by ecclesiastics, the device of a fictitious suit was invented, in which the ecclesiastical body to be benefited was the plaintiff, and the donor of the lands the defendant; the defendant by collusion, made no defence, and judgment was given in favour of the plaintiff. These suits, which obtained the name of *common recoveries*, were afterwards sanctioned by the judges of the courts of common law, adopted as well by lay persons as ecclesiastics, and became one of the common assurances of this country; and they will either be considered as such, or as an adverse suit, as will best effect the intentions of the parties; 5 Co. 40 b; 2 N.R. 503; and see *Collyer* v. *Mason*, 2 B. & B. 685; 5 Moo. 597. They are now almost exclusively employed for the purpose of barring estates tail. See *Martin* v. *Strachan*, Willes, 451. Their entire abolition having been repeatedly recommended, is now under the consideration of the legislature, and will, probably, be carried into effect. But as, whether abolished or not, they must occur in titles for a considerable period of time, and as, therefore, their nature and operation should be made familiar, the principal points respecting them will here be mentioned.

Proper mode of suffering a recovery.

The first thing to be done in suffering a common recovery is, for the person who is to be the demandant, and to whom the lands are to be adjudged, to sue out a writ or *præcipe* against the tenant of the freehold; whence such tenant is usually called the tenant to the *præcipe*.

In obedience to this writ the tenant appears in court, either in person or by attorney; but instead of defending the title of the land himself, he calls upon some other person, who, upon the original purchase, is supposed to have warranted the title, and prays that that person may be called in to defend the title which he warranted, or otherwise to give the tenant lands of equal value to those which he shall lose by defeat of his warranty. This is called the voucher, or calling to warranty. And it should be observed, that the term "*vouching to warranty*," is the proper expression, and has a technical meaning, and any other expression is insufficient. *Linney vouchee*, 4 Bing. 101.

The person thus called to warrant, who is usually called the vouchee, appears in court, is impleaded, enters into the warranty, and thus takes upon himself the defence of the land. The demandant then desires leave of the court to imparle or confer with the vouchee in private, which is granted, as of course. Soon after, the demandant returns into court; but the vouchee disappears, or makes default; in consequence of which, it is presumed by the court that he has no title to the lands demanded in the writ, and, therefore, cannot defend them; whereupon judgment is given to the demandant, now called the recoverer, to recover the lands in question against the tenant, and for the tenant to recover against the vouchee lands of equal value, in recompense for those so warranted by him, and now lost by his default.

This is called the recompense or recovery in value; but as it is common to vouch the crier of the Court of Common Pleas, or other Court, according to the circumstances, who is hence called the common vouchee; the tenant can only have a nominal and not a real recompense for the land thus recovered against him by the demandant.

A writ of *habere facias* is then sued out, directed to the sheriff of the county in which the lands thus recovered are situate, and seisin must be actually delivered, or there must be a return upon this writ by the sheriff, that he has delivered seisin, Str. 1185; 1 Wils. 48. On the teste of the writ of seisin the recovery is complete. *Lewin* v. *Guest*, 1 Russ. 325.

The recovery here described is with a single voucher; but a recovery may, and is generally, suffered with a double, and sometimes with a treble voucher; in which case there are several judgments against the several vouchees.

A certificate of all the proceedings is then made out under the seal of the court in which the recovery is suffered, and delivered to the par-

ty suffering it. This certificate is called the *exemplification*, and this is in the nature of a record, and cannot be impeached on the ground of defect or supposed marks of fraud. *Doe* v. *Pickering*, 3 Dow. & Ry. 499.

In a recovery with double voucher, the tenant in tail conveys an estate to some indifferent person, against whom the writ is brought, this person being tenant to the *præcipe*, vouches the tenant in tail, and thus every interest which he has in the lands is barred, which would not be the case were the tenant in tail made tenant to the *præcipe*; the tenant in tail vouches over the common vouchee, upon whose default judgment is given for the demandant against the tenant to the *præcipe*, and for the tenant to the *præcipe* against the tenant in tail; and for the tenant in tail against the common vouchee. See 5 Cru. Dig. 286.

What things are necessary to a recovery.

It appears, therefore, that there must be,—1st, a demandant,—2nd, a tenant to the *præcipe*;—3d, a proper writ;—4th, voucher and vouchee or vouchees;—5th, judgment;—and, 6th, execution.

Demandant.

1. The demandant is a formal party, who stands as plaintiff on the proceedings; and, therefore, any person capable of sustaining that character may be a demandant. The solicitor of the tenant in tail almost always fills this character; but any other person will answer as well, provided he be alive at the time judgment is given on the recovery; as in case of his death, during the pendency of the suit, another demandant must be named, and the proceedings must be recommenced.

Tenant to the præcipe.

2. Where the recovery is suffered by tenant in tail, it is essential to the validity of the recovery, that the tenant to the *præcipe* should have, at the time of the recovery, the first estate of freehold in the lands which are to be the subject of the recovery; *Haines Barley's case*, 5 Mod. 210; *Parkhurst* v. *Smith*, Willes, 327; but he need not have the lands at the time of the suing out, or the return of the writ of entry; *Lacey* v. *Williams*, 2 Salk. 568; or even at the time of the judgment given in the recovery, and the award of the writ of seisin, provided the fine or deed or deeds making the tenant to the *præcipe* appear to be levied or executed before the end of the term, great session, session, or assizes in which such recovery was suffered, and the persons joining in such recovery had a sufficient estate and power to suffer the same, 14 Geo. II. c. 20, s. 6. And under this act it has been held, that though the deed to make a tenant to the *præcipe* be not executed until after the execution of the writ of seisin, yet if the recovery be suffered within the term it will be good; *Goodright* v. *Rigby*, 2 H. Bl. 46.

The 14 Geo. II. c. 20, s. 1, has removed another difficulty, which often obstructed the suffering a recovery. If the lands were let on

leases for lives, it was necessary that the lessees should surrender, or join in making the tenant to the *præcipe;* but by this statute it is enacted, that all recoveries suffered without any surrender of such lease, and without any concurrence or conveyance from such lessees, shall be valid to all intents and purposes. But by sec. 2, prior *estates* for lives are expressly exempted from the operation of the act.

If there be a prior estate for life, therefore, the tenant for life must surrender his estate to the joint tenant in tail in remainder, before he makes the tenant to the *præcipe*, or he must concur in making the tenant.

After a considerable time, however, has elapsed, and if possession has gone with the recovery, the surrender of the estate for life will be presumed; *Anon.* 1 Vent. 257; 1 Mod. 117, S. C.; 3 Keb. 310, S. C.; and it will not be necessary to prove seisin in the tenant to the *præcipe*, *Keen* v. *Lord Effingham*, Str. 1267. But where there is no reasonable ground for such a presumption, and possession has not gone with the recovery, a surrender will not be presumed, *Goodtitle* v. *Chandos*, 2 Burr. 1065; *Warren* v. *Grenville*, Str. 1129.

No prior terms for years will prevent the first tenant in tail in remainder from suffering a common recovery; Pig. 50; and no term for years, or estate held by statute merchant, or staple, or by elegit, will be barred by a recovery, 21 Hen. VIII, c. 15.

The most usual deeds for making a tenant to the præcipe.

The tenant to the *præcipe* may be made either by fine, feoffment, lease and release, bargain and sale enrolled, or covenant to stand seised. Of these, the most usual modes are the lease and release, and the bargain and sale. Of these two, a bargain and sale is the most general assurance, as it is an advantage to have the deed making the tenant to the *præcipe* enrolled; and where the deed is short, the excess of the expense of enrolment, over the expense of a lease for a year, would be trifling. Where the deed making the tenant to the *præcipe* is necessarily long, the expense of the enrolment would be considerable; and to save this expense, the assurance by lease and release is then often adopted. The trouble of getting a bargain and sale enrolled, and the danger of an accidental omission in getting it enrolled in time, also furnish grounds for making the conveyance by lease and release.

In a bargain and sale, the estate vests on the execution of the deed, subject to being devested, on noncompliance with the provisions of the act of enrolment, Hen. VIII. c. 11. See Vol. VI, 439; the tenant to the *præcipe*, if made by this assurance, may appear and consent before enrolment, if the deed be enrolled within six months. *Robinson* v. *Comyns*, Cas. Temp. Talb. 164.

By the 14 Geo. II. c. 20, s. 5, reciting, that it had frequently happened, that the deeds for making the tenants to the writs of entry, or other writs for common recoveries, had been lost, it is enacted, that

every common recovery then suffered, or thereafter to be suffered, should, after the expiration of twenty years from the time of the suffering thereof, be deemed valid to all intents and purposes, if it appear upon the face of such recovery that there was a tenant to the writ, and if the persons joining in such recovery had a sufficient estate and power to suffer the same, notwithstanding the deed or deeds for making the tenant to such writ should be lost.

As to parties appearing by attorney.

The tenant or vouchee may appear by attorney; and where this is the case, they must execute and acknowledge a warrant of attorney to appoint some other person to appear for them. The taking this acknowledgment is called the *caption*, and a *dedimus* is necessary to take the acknowledgment; but the Chief Justice of the Common Pleas, or the Justices of the Great Sessions of Wales, and of the counties palatine, may take acknowledgments out of court without the sanction of a *dedimus*. Jenk. Cent. 169, 279. Dy. 224 b. pl. 31. 3 Taunt. 50. 34 & 35 Hen. VIII. c. 26. s. 40. The demandant need not appear either in person or by attorney.

Defective recovery will be good against persons performing it.

A defective recovery, however, will be good against the tenant in tail himself, 3 Co. 3 b. 5 b., and against all the world, until it is avoided.

If the immediate freehold be vested in several, all must be made tenants, or the recovery will not operate upon the part of the lands vested in those who are not made tenants. v. *Busswell*, 4 Taunt. 102.

If the recovery is to be legal, the tenant to the *præcipe* must have the legal freehold. *Ireson* v. *Pearman*, 3 B. & C. 799. And see 1 Byth. 16. Where the recovery is to be equitable, the tenant to the *præcipe* should have the equitable freehold. *Phillips* v. *Bridges*, 3 Ves. 125.

If the freehold of the lands was in the tenant to the *præcipe* in any day of the term on which judgment in the recovery was suffered, a subsequent avoidance of the conveyance by which the freehold was conveyed to him, will not affect the recovery. *Lloyd* v. *Evelyn*, Salk. 568; *Johnson* v. *Lord Derby*, Peg. 201, 11 Mod. 304. And this rule, as will be seen hereafter, is acted on in practice.

The wife of a tenant to the *præcipe* will have no right to dower, nor can such tenant subject the lands to any incumbrance. *Taylor* v. *Horde*, 1 Burr. 117.

If he was possessed of a term of years in the lands, such term will not be merged, as a recovery will always be construed according to the intent of the parties. *Terry's* case, cit. 1 Ventr. 195; *Farrows* v. *Farmer*, 2 Roll. Rep. 245. Str. 274; *Taylor* v. *Horde*, *ubi supra*.

Writ.

3. The writ commonly used is the writ of entry *sur disseisin en le post*, which is the most fitted to the circumstances of the case. The writ contains a statement of the term when the recovery is to be suf-

fered, the parties' names, and the parcels. A common recovery should always be commenced with an original writ, 5 Co. 38 b.; but if it be commenced without an original, it is not void, but voidable. *Marquis of Winchester's case*, 3 Co. 3 a.

On the suing out a writ of entry *sur disseisin en le post*, a fine of a noble, or 6*s.* 8*d.* for every five marks, or 16*l.* 13*s.* 4*d.* of the value of the land, is due to the King at the Alienation Office. This is usually compounded for by the commissioners at the alienation office.

The writ must be made returnable when by law writs in an adverse suit are returnable.

If the lands are situate in several counties, there must be separate writs of entry, and separate recoveries for each county. Prest. Touch. 13. So also if a recovery be suffered of a New River share, there should be three writs and recoveries, as the New River runs through three counties. See Vol. VI. p. 521.

Voucher.

4. A recovery may be suffered with single, double, or treble voucher. A recovery with single voucher is never suffered except where the tenant in tail is also entitled to the reversion in fee; and a recovery with treble voucher is rarely used, except there are two estates tail to be barred.

The ordinary recovery is with double voucher, as has been described above, p. 68.

If the tenant in tail is vouched, it is immaterial whether he is vouched alone or with another; Hob. 27. Plowd. 504, 514. *Jennings* v. *Rogers*, Ld. Raym. 753; *Doe* v. *Nelson*, 2 Taunt. 59; or by whom he is vouched; Pig. 180. Salk. 571.

A recovery without voucher, although it will not bar the issue, will convey an estate, and operate by estoppel. See 1 Prest. Conv. 120.

If a vouchee become insane after signing the warrant of attorney, the court will not permit the recovery to be presumed to be passed as to him. *Walcot vouchee*, 4 Bing. 101; but it may pass as to the other parties. *Vale & others*, 5 Bing. 176.

Judgment and execution.

V. The Judgment, and VI. the Execution, have been already mentioned.

It may be further observed, that the judgment should be had at a time when the court is sitting, and must therefore be in term time.

A writ of seisin is made out, and the sheriff always makes a return that he has executed the writ and delivered seisin; but in fact the writ is never executed and seisin never delivered by the sheriff. See *Goodright* v. *Rigby*, 5 T. R. 181.

Courts in which recoveries may be suffered.

Courts in which recoveries may be suffered.—The courts in which recoveries should be suffered must here be mentioned.

Lands in Lancaster, 37 Hen. VIII. c. 19; Durham, 5 Eliz. c. 27; and Chester, 34 & 35 Hen. VIII. c. 26. s. 40; 43 Eliz. c. 15. s. 3; 5 Cru. Dig. 102; or in Wales, 34 & 35 Hen. VIII. c. 26. s. 40; 27 Eliz. c. 9. s. 1. and 5 Geo. IV. c. 106. s. 26. are within the jurisdictions of the respective courts of these places, and a recovery of them must by the statutes above mentioned be suffered there; and it would seem that a recovery suffered in the Court of Common Pleas, of lands in a county palatine, or in Wales, would be actually void. See 1 Prest. Conv. 268. 4 Inst. 223. So also recoveries of copyholds, and of lands in ancient demesne, must be suffered in the manor courts, or in the court of ancient demesne. *Oliver* v. *Taylor*, 1 Atk. 474; *Hunt* v. *Bourne*, Salk. 339.

But recoveries of all other lands in England should be suffered in the Court of Common Pleas at Westminster.

Description of parties.

Parties.—The parties to a recovery should be accurately named in the writs and other proceedings, as the court has frequently refused permission to correct a wrong description, *Dixon* v. *Lawson*, 2 Bl. 816. 2 B. & P. 455; and see 3 J. B. Moo. 241; 8 J. B. Moo. 449; but a mistake in the description of the christian name of the tenant, and it would seem of any other party, was held not to be material, *Doe d. Lushington* v. *Lord Bishop of Llandaff*, 2 B. & P. N. R. 491; and see Fearne Post. 344. If a peer, whether temporal or spiritual, grant by his name of honour or dignity, without any, or with a false name of baptism, the grant will be good, because there is but one such person, Touch. c. 12; but the christian name of a baronet, knight, esquire, and gentleman, and all of inferior degree, are always given.

Who may suffer in respect of their estate.

The rules as to who may suffer a recovery may be considered under two heads: First as regards the estates of the parties suffering it, and secondly, as to their personal disabilities.

Tenant in fee simple.

I. Tenant in fee simple (if in possession, *Roe* v. *Wegg*, 6 T. R. 708) may unquestionably suffer a recovery, but it can only be useful to him as a conveyance, and will not better his title, Pig. 123. Cro. Eliz. 21; but it will bar any equitable lien on the land for a settlement, *Marwood* v. *Turner*, 3 P. Wms. 163. Persons having a qualified or determinable fee cannot suffer an effectual recovery, Pig. 192. 2 Rol. Ab. 394; 1 Mod. 111; and they will not acquire a fee simple.

Tenant in tail.

Tenant in fee tail in possession, as has been before observed, may avail himself of all the peculiar virtue of a recovery, and may thereby enlarge his own estate into a fee simple, and bar all remainders limited thereon; and any condition restricting his right to suffer a recovery will be void. *Mildmay's case*, 6 Co. 40; *Sonday's case*, 9 Co. 128 b.; *Collins* v. *Plumer*, 1 P. W. 104.

Tenant in tail in remainder, if he can procure the concurrence of the first tenant for life, may also suffer a recovery, which will extend his

own estate tail into a fee simple, *Garth* v. *Cotton*, 3 Atk. 756, and bar all remainders limited thereon; but it will not affect any entails between the estate of the tenant for life and his own estate. Thus if lands be limited to A. for life, to B. in tail, remainder to C. in tail, remainder to D. in fee. C., with the concurrence of A., may suffer a recovery, destroy his own estate tail, and bar the remainder in fee of D.; but such recovery will not in any way affect the estate tail of B., who may on coming into possession of the lands, suffer a recovery, which will defeat the effect of the recovery suffered by C. and bar the fee gained thereby, 3 Co. 6, *Smith* v. *Clifford*, 1 T. R. 738; *Doe dem. Bean* v. *Halley*, 8 T. R. 5. 10.

But in the case put above, if either B. or C. without the concurrence of A., or before coming into possession, had suffered a recovery, such a recovery would have been voidable, although not void. See 3 Co. 3 a

Tenants in tail, after possibility of issue extinct, cannot suffer a recovery, 14 Eliz. c. 8. Co. Litt. 251 b. Skin. 74 So persons having only contingent interests in tail, or interests in tail under executory devises, cannot suffer an effectual recovery, 1 Keb. 391, although a recovery would pass their own estates by estoppel.

Tenant for life.

No tenant for life can suffer a recovery alone. Such a recovery will be void, and will cause a forfeiture of his estate. 14 Eliz. c. 8. 1 Co. 15. Co. Litt. 362 a. Touch. 44.

Tenant for years.

As a consequence of the preceding propositions, no tenant for years, or any person having a less estate, can suffer a recovery.

Mortgagee.

A mortgagee cannot suffer a recovery so as to bar the mortgagor and his heirs. *Stanhope* v. *Thacker*, Prec. Cha. 435. Cro. Jac. 593.

Tenants in tail, *ex provisione regis*.

Tenants in tail *ex provisione regis* are expressly restricted from suffering a recovery by the 34 & 35 Hen. VIII. c. 20; and a recovery by such a tenant is void, both as to the issue in tail, and the remainder-man. Touch. 15. 28. 42. But this statute will be construed strictly, and is confined to lands given for services, and does not apply to what is given for money. *Witham* v. *Lewis*, 1 Wils. 48. Dy. 32 a. *in notis*.

And a tenancy in tail so created can neither be barred by the tenant in tail, or any claiming under him, or by a stranger. Cro. Eliz. 595. Moore, 467, *contra*. Co. Litt. 373 a.

Tenant in tail, *ex provisione viri*.

If any woman who shall have any estate in dower, for life, or in tail, jointly with her husband, or only to herself, or her use, in any hereditaments of the inheritance or purchase of her husband, or given to the husband and wife in tail, or for life, by any of the ancestors of the husband, shall, being sole, or with any after taken husband, discontinue, alien, release, or confirm with warranty, or suffer any recovery of the same, all such recoveries and discontinuances shall be utterly void, and of none effect, 11 Hen. VIII. c. 20. And it shall be lawful for the person entitled to the lands to enter thereupon after the decease of the woman,

notwithstanding such recovery, 11 Hen. VIII. c. 20. But by the same statute, if the heirs next inheritable assent to the recovery, then it shall be valid. But if the recovery be void, the remainder-man may also enter. *Ward* v. *Walthew*, Cro. Jac. 173. Yelv. 101.

Copyholds. The statute does not apply to copyholds, Gilb. Ten. 181; but it applies as well to equitable as legal estates. 5 Cru. Dig. 450, 3d edit.

Person in by wrong. The recovery of a person *in* by wrong, will not better his estate, and will not bar the person having the rightful estate in the lands. *Anon.* 1 Anders. 44. pl. 111.

Persons having future interests. Persons having future interests in the lands cannot suffer a recovery by themselves, unless they disseise the person in possession of the freehold; and this disseisin must not be a mere disseisin at election, but an actual disseisin. *Taylor* v. *Horde*, Burr. 60; and *Doe* v. *Horde*, Cowp. 689.

Husband and wife. A husband seised in right of a tenant in tail, his wife may alone by deed make a good tenant to the *præcipe*. Cas. temp. Talb. 167. Pig. 72. But if the husband only is vouched in the recovery, the entail will not be barred. *Hallett* v. *Saunders*, 2 Bac. Abr. 546.

Co-tenants. A recovery by one of several joint-tenants, coparceners, or tenants in common, although it be suffered of the whole of the land, will operate only upon his share, *Collyer* v. *Mason*, 2 Brod. & B. 685. 5 Moo. 597. S. C.; unless he has actually ousted his co-tenants, as to which see Vol. VI. 8—12.

As to personal disabilities to suffer recoveries. II. As a general rule, all persons can suffer and be parties to a recovery; and this assurance being of record, has in most cases the peculiarity that, although the parties were originally incapable, or improper persons to convey lands by means of a recovery, yet when it is once perfected, it is only voidable, and not void; and voidable only at certain times, and by certain persons. These peculiarities are now to be mentioned.

The king. The King or Queen regnant cannot suffer a recovery, as it is against his or her dignity to be sued, *Willion* v. *Berkeley*, Plowd. 233; or to be

Queens. vouched, *Anon.* Cro. Car. 96. But a Queen Consort, being considered as a feme sole, and being liable to be sued, may suffer a recovery.

Infants. An infant properly cannot suffer a recovery; and the court will, during the life of the infant, stop the recording of a recovery suffered by him, or order the exemplification to be delivered up, and vacate the recovery. *Warnecombe* v. *Carell*, Dy. 230 b. 12 Co. 124 b. 2 Ventr. 30. *Hutchinson's* case, 3 Lev. 36. *Buckby's* case, Skin. 23; and punish all those who are concerned in suffering it, or inducing the infant to concur in it. *Day* v. *Hungate*, 123 b. 1 Rol. Rep. 113. 12 Co. 122 a. So also he may himself, during his nonage, avoid the recovery by bringing a writ of error. Co. Litt. 380 b. But the writ of error must be brought during the nonage, as the mode of trying infancy is by the personal

inspection of the party by the court. Co. Litt. 380 b., if he can be made to appear, 1 Roll. Rep. 115. 12 Co. 122.; and this cannot be done except during the infancy, Co. Litt. 380 b. *Raby* v. *Robinson*, 1 Lev. 142. 1 Sid. 321. 1 Keb. 796. 2 Keb. 141: but if he be examined, and his infancy be recorded, he or his heirs may reverse it at any time, Co. Litt. 380 b. *Poyntz's* case, Cro. Jac. 230.

But it seems that if an infant appear by his guardian, a recovery thus suffered will not be reversed. *Earl of Newport's* case, Cro. Car 307. 1 Sid. 321. 1 Ventr. 73; but if the infant appear by attorney, as there has been no inspection, it may be reversed after he is of full age. *Darcy* v. *Jackson*, Palm. 224. *Stokes* v. *Oliver*, 5 Mod. 209.

The Crown at one time, in cases of urgent necessity, and where it was to the infant's advantage, granted a privy seal to an infant, allowing him to suffer a recovery, *Blount's* case, Hob. 196. *Hulbert* v. *Watts*, Ld. Raym. 113; but this indulgence does not seem to have been granted in later times. See *Sir John St. Alban's* case, 1 Salk. 567. 1 Fonbl. Eq. 88. n. (*e*).; and the usual mode in such a case at the present time, is to apply for a private act of parliament.

It should be observed, that the marriage of the infant does not remove his or her disability.

An infant feme covert will be ordered, under the 6 Geo. 4. c. 74, to suffer a recovery. *Anon.* Com. 615. *Ex parte Maire*, 3 Atk. 479; or any other infant within the act. *Ex parte Johnson*, 3 Atk. 559; cases which were decided under the 7 Ann. c. 19. Infant trustee.

Femes Covert.—A feme covert may suffer a recovery, and will be bound by it. 2 Co. 57 b. And if she were forced to concur in it, she has certainly no remedy at law. Touch. 9; and it seems very doubtful whether she would be relieved in equity. Coverts.

But if a married woman suffer a recovery without her husband, which is improper, except under special circumstances, the husband may avoid the recovery by writ of error, or by entry into any part of the land during her life. Cru. Fin. 102. Touch. 7.; and on the avoidance of the recovery, the estate will revest in the wife, and neither she nor her heirs will be bound by it, Cru. Fin. 103. But if the husband do not avoid it, it will be binding on the feme covert and her heirs. 10 Co. 43 a. *Ex parte Abney*, 1 Taunt. 38.

But if special circumstances be shewn to the court, a *feme covert* will be permitted to suffer a recovery without her husband; as if the husband has consented to suffer a recovery, and has gone abroad without suffering it; or having contracted to sell, and allowed his wife to be separately examined, in order to levy a fine, he has become *non compos*. See *Moreau's* case, 2 Bla. 1205. *Stead* v. *Izard*, 1 N. R. 312; *Ex parte* Abney, 1 Taunt. 37; *Ex parte* St. George, 8 Taunt. 590; which

it is to be remarked are all cases of *fines*; but the same principle in this case applies also to recoveries.

By a late rule of the C. P. which commenced in Trinity term 1827, modifying an order of the preceding Hilary term, on the suffering of every recovery out of court by husband and wife, an affidavit by one of the commissioners, must be made, that the parties were of full age and competent understanding, and that the wife was examined apart, and consented to the warrant of attorney, and that she knew the same was intended for the purpose of suffering a recovery to pass her estate, and that the wife declared that she gave up her interest in the lands without any provision in return, or that there was to be a provision, according to the fact.

Persons of unsound mind.

Persons of Unsound Mind.—All persons of unsound mind, whether idiots, lunatics, or persons imbecile from old age, are manifestly incapable of suffering a recovery. But if a recovery be suffered by them in person, it will bind them and their heirs at law, *Mansfield's* case, 12 Co. 123; but equity will relieve against such a recovery, *Clerk* v. *Clerk*, 2 Vern. 678.

By the 6 Geo. IV. c. 74. s. 9. all persons being trustees, of unsound mind, or the committee or committees of such person, shall be empowered and compelled by an order to be obtained as therein is mentioned, to make such conveyances or other assurances as trustees of sane mind, memory, and understanding, are compellable to make.

Blind, deaf, or dumb persons, and persons afflicted with two of these maladies, may suffer a recovery if they be capable of understanding its nature; but persons who are deaf, dumb, and blind, as they have not the usual inlets of understanding, are incapable of suffering a recovery. See the cases cited, 2 Byth. 656. n. (*a*).

Persons under duress.

Persons under duress ought not to be permitted to suffer a recovery; but if it is once suffered, it is binding until it is vacated, Touch. 6. 7; and the mode of setting it aside under such circumstances has never been determined, although perhaps a bill in equity would be the most likely to effect the purpose.

Outlaws.

If a man is outlawed in a personal action, he may nevertheless suffer a recovery; for although the outlawry occasions a forfeiture of the rents and profits, it does not otherwise affect the lands, Touch. 7. 5 Cru. Dig. 118. 3d edit. West's Symb. p. 2. s. 13.

Attainted person.

A tenant in fee or in tail, attainted of treason, cannot suffer a valid recovery, as on the attainder the freehold vests in the King, without further form, 33 Hen. VIII. c. 20; and the person attainted cannot make a good tenant to the *præcipe*. But the better opinion appears to be, that if a tenant in tail hath committed murder, he may bar the entail by fine, and the remainders by recovery, between the stroke and the attainder. 2 Wils. 219. 1 Prest. Conv. 140.

Alien.

An alien enemy cannot properly suffer a recovery. *Cruttenden* v. *Bourbell*, 1 Taunt. 144; but if it be once perfected, it would seem that it cannot be reversed by writ of error. Touch. by Prest. 7, n. 41; and see Noy, 137. *Anon.* 4 Leon. 84. But if an alien friend suffer a recovery, it will not conclude the king after office found. 13 Vin. Ab. 228; 4 Leon. 84; Goldsb. b. 82; 1 Taunt. 145.

As to who may take by recovery.

As any person may sue out a writ of entry, it follows that any person may be demandant in a common recovery; and the uses of a recovery may also be declared to any one capable of taking lands by way of grant, such as infants, married women, corporations sole or aggregate, or any other persons not considered in law as civilly dead. 5 Cru. Dig. 382.

Death of parties in the progress of recovery.

Deaths of the Parties.—The death of either the defendant, the tenant, 1 Bl. 531, or of the vouchee, *Wynne* v. *Wynne*, 1 Wils. 35. Willes, 563; *Swann* v. *Broome*, 1 Bl. 496, in the progress of the recovery, will avoid it. But the death on the day on which judgment may be considered as given, however early on that day, or the death after the judgment is considered to have been given, *Shelley's* case, 1 Co. 106 b. will not invalidate it, although the writ of seisin be not executed until afterwards, although, perhaps, the remainder man could impeach such a recovery, Dyer, 35 a.

As to what property may be the subject of a recovery.

Subject matter of Recovery.—The property which may be the subject of a recovery is now to be mentioned; and it may be laid down generally, that all things inheritable and in *esse*, and which may be the subject of a real action, and which are within the jurisdiction of the court, may be included in a recovery, Touch. 10. Thus a rent, a right of common, an advowson, with a small piece of land, or franchise, Touch. 41. *Crocker* v. *Dormer*, 2 Bos. & Pul. 579. Poph. 22. *Bayley* v. *University of Oxford*, 2 Wils. 116, a New River or canal share, if it is not made personal estate by the act creating the company; see *ante*, p. 2. *Drybutter* v. *Bartholomew*, 2 P. Wms. 128; and an estate or interest in a remainder or reversion, Prest. Touch. 10, n. 53, may all be the subject of a recovery.

By the 32 Hen. VIII. c. 7. s. 7. recoveries may be suffered of parsonages, vicarages, tithes, oblations, and other ecclesiastical or spiritual profits.

So also there may be a recovery of an undivided part, Cro. Car. 110.

At one time it was thought that a recovery could not be suffered of an upper chamber, a fishery, &c. see Touch. 41; but this opinion is now obsolete, and all these things may be the subject of a recovery, either as principals, or as appurtenant to things of which recoveries may certainly be suffered. Wils. Rec. 283. Cov. Rec. 147.

No recovery of lands of copyhold tenure, or of ancient demesne, should be suffered in the court of Common Pleas, as they will not pass thereby, the manor court being the proper place for such a recovery. *Oliver* v. *Taylor*, 1 Atk. 1 Watk. Cop. 161.

The parcels must be described by their names, quantities, and situations, beginning with that part which is of the highest nature, and concluding with general words sufficient to include any thing omitted.

Where the subject of the recovery was a third part of tithes, and they were described in the recovery deed as being in the "vill of A." and in the recovery, as in the "parish of A." the tithes not in the vill of A. were held not to pass. *Gibson* v. *Clark*, 1 Jac. & W. 163; see also *Ward* dem. *Palmer*, 6 J. B. Moo. 225.

The recovery will be confined to the property which was meant to be the subject of it, if the intent of the parties can be clearly ascertained. *Kelly's case*, Poph. p. 104.

A title of honour, as a dukedom, Show. Parl. Ca. 1; a mere personal annuity, 1 B. C. C. 319. Pig. 97.; a right of nomination to a perpetual curacy, as there is no such right known to the law, *Horne* v. *Lodge*, 3 Taunt. 462; and an estate *pur auter vie*, 2 Eden, 340, cannot be the subjects of a recovery.

Money directed to be laid out in land, cannot be the subject of a recovery, *Benson* v. *Benson*, 1 P. Wms. 130; *Short* v. *Wood*, 1 P. Wms. 470; although this rule has been opposed. *Eyre's case*, 3 P. Wms. 13. But by the 39 and 40 Geo. III. c. 56, it is enacted, that in all cases where money under the controul of a court of equity, or of which any individuals are trustees, shall be subject to be invested in the purchase of lands, to be settled in such manner that it would be competent for the first tenant in tail, either alone, or together with the owner of the preceding particular estate, to bar such estate tail or remainders, by recovery or otherwise, it shall not be necessary to have such money actually invested in land, in order that such estates tail and all remainders may be so barred, but it shall be lawful for the court of equity, under the controul of which such monies shall be, and in the case of trustees for the Court of Chancery in a summary way, upon petition of the person who should be tenant of the first estate tail, and of the person who should be owner of the prior particular estate, if any, such petitioners being adult, and if *femes covert*, being first examined separately, to order the monies subject to such trusts to be paid to the petitioners, or as they shall appoint. But the money will not be paid out of court until such time as the tenant in tail might actually have suffered a recovery. See 5 Ves. 12, n. *Ex parte Hodges*, 6 Ves. 576. *Ex parte Frith*, 8 Ves. 609.

See further as to the parcels and the description of the things usually

included in recoveries, Hands on Fines and Recoveries, 60. 246 *et seq.* 4th edit.

Effect of a Recovery.—A recovery suffered by tenant in tail will give to the recoveror an estate in fee simple. *Martin* v. *Strachan*, Willes, 444. Effect of recovery.

A recovery suffered by tenant in tail will confirm all incumbrances which the tenant in tail has made, 1 Co. 48 b. Str. 296. 1 Mod. 109. 3 Keb. 288; and will render such of them valid as were invalid on account of the insufficiency of the estate of the tenant in tail; as for instance, a lease not authorised by the enabling stat. 32 Hen. VIII. c. 28. Pig. 120; 1 Saund. 260, n.; Amb. 649. *Beck* v. *Welsh*, 1 Wils. 277. *Goodright* v. *Mead*, 3 Burr. 1703; but it will not let in the charges of the remainder man, or reversioner, *Capel's case*, 1 Co. 61 b. Poph. 5

A recovery suffered by husband and wife will bar the wife of her dower. *Eare* v. *Snow*, Plow. 515. Dower.

According to the settled law of former times, a remainder in the crown is not barred by a recovery. *Cholmley's case*, 2 Co. 52. Moor, 342. Bro. Ab. *Assurance*, pl. 6. And there is at the present time sufficient doubt resting on the matter to prevent equity from decreeing that a purchaser shall take lands liable to such a claim. *Blesse* v. *Clanmorris*, 3 Bli. 62.

A recovery will in general revoke any devise which has been previously made of the property. *Parker* v. *Biscoe*, 8 Taunt. 699. *Doe* v. *Dilnot*, 2 N. R. 400. *Marwood* v. *Turner*; 3 P. Wms. 163; and this will be the same although the recovery should be defective. *Doe* v. *Bishop of Llandaff*, 2 N. R. 491; but where the recovery is suffered merely for the purpose of effecting a partition, and the devisor's share is limited to him in fee, a devise will not be revoked. *Luther* v. *Kidby*, 3 P. Wms. 170, n.; 6 Ves. 218. 219; 10 Ves. 256. Devise revoked by recovery.

A recovery suffered by a tenant in tail to his own use, will not break the course of descent. *Martin* v. *Strachan*, Willes, 444; cited 5 T. R. 107, n., and the estate in fee simple will descend to the paternal or maternal heir, according as the estate descended from a paternal or a maternal ancestor. Recovery will not break descent.

A recovery suffered by a tenant for life, if unexplained, will destroy all powers incident to his estate, whether appendant or in gross. *Digges's* case, 1 Co. 173 a. *King* v. *Melling*, 1 Ventr. 225. And it was thought at one time that a recovery necessarily had this operation, and that its effect could not be controuled by the parties; but it seems to be now clear, that if it was the intention of the parties that the powers should be preserved, and this intention appear on the deed leading or declaring the uses, the powers will remain unaffected by the recovery. As to recovery destroying powers.

See *Tyrrell* v. *Marsh*, 31 Bing. 3; and 2 Byth. 312. Stewart's edit. and Vol. VI. 417. *Earl of Jersey* v. *Deane*, 5 B. & A. 569.

Contingent remainders.

But a recovery will destroy contingent remainders. *Doe* dem. *Herbert* v. *Selby*, 2 B. and C. 926.

Estoppel.

A judgment in a recovery operates as an estoppel on record. Thus a tenant in tail in remainder may bind himself by estoppel by suffering a recovery; but it will not bar the issue in tail or the remainder man, Pig. 123; 10 Mod. 45. Thus also a defective recovery will operate by estoppel, and bind the party suffering it. 3 Co. 5.10 Mod. 40.

Amendment.

As to amending recoveries.—Clerical errors in the proceedings in a recovery may always be amended on motion, and on payment of the additional king's silver. In cases of gross negligence, the attorney will be made to pay the costs. *Williamson* dem. 4 Moo. 171.

The recovery deed itself can never be amended, except it is ambiguously worded; and then the court will amend on an affidavit of what was the intention of the parties. 5 Taunt. 303.

The cases as to amending recoveries are very numerous, but it is difficult to extract general principles from them. The courts seem to lean towards permitting amendments. The leading cases on this point are *Williamson* dem. *Meggison*, 4 Moo. 49. *Copland dem.* 8 Taunt. 86. *Greenaway* vouch. 2 Moo. 237. *Shepherd* dem. *Brewer Shepherd* vouch. 3 Moore, 673. *Edye* dem. 2 B. & B. 98, and 4 Moore, 514. *James* dem. *Williams* ten. *James* vouch. 7 Taunt. 434; 1 Moo. 130. *Fox* dem. *Benbow* ten. *Earl Gower* vouch. 6 Taunt. 652, and 2 Marsh, 328. *Forster* dem. *Forster* ten. *Darcy, Bolton, and wife*, vouch. 6 Taunt. 372; and *Clutterbuck*, plaintiff, and *Brabant*, defendant, 6 Taunt. 1. *White* dem. *Bicknell* ten. *Papillon* vouch. 2 Moo. 299; 8 Taunt. 303; and see 3 Moore, 326. *Allen* dem. *Hexby* ten. 6 Moo. 46. *Coore* dem. *Spragg* ten. 8 Taunt. 333. *Webber*, plaintiff, *Grey* defendant, 5 Moo. 97; 7 Taunt. 69. *Gwynne* dem. *Heathcote* ten. *Camfield* vouch. 2 Moo. 163. *Marryatt* dem. *Elmore* ten. 6 Moo. 50. *Noble* dem. 7 Taunt. 697. *Wallis* dem. 8 Taunt. 104. *Sanderson* dem. 8 Taunt. 105. *Lord Elliot* vouch. 1 Bing. 425. *Palmer* dem. &c. 1 Bing. 143. *Haggerstone* v. *Hanbury*, 5 B. & C. 101. *Chambers*, plaintiff, *Blake* ten. 8 Moo. 586. *Battisall*, plaintiff, *Turner* ten. 9 Moo. 591. *Oddie* dem. *Foster* ten. 3 Bing. 446. *Smith*, plaintiff, *Broderick* ten. 10 Moo. 109. *Rogers* dem. *White* ten. 9 Moo. 570. *Tutton* dem. *Grey* vouch. 2 Bing. 813. *Rogers* dem. &c. 1 Moo. 740. *King* dem. 10 Moo. 151. *Rawling's case*, 4 Bing. 426.

For what errors writ of error may be brought.

As to the reversal of recoveries by Writs of Error.—If there is any gross and palpable error in the essential part of a recovery, it may be remedied by writ of error. Jenk. 258.

False Latin, rasure, interlining, new entering of the warrant of at-

torney, the want of the return by the sheriff, or any other fault in the words and not in the substance, will not be sufficient to reverse a recovery. 33 Eliz. c. 3. s. 2.

And nothing which is contrary to the record can be assigned for error. Co. Litt. 260 a. *Arundel* v. *Arundel*, Yelv. 33. Cro. Jac. 11.

But if the acknowledgment of the warrant of attorney of a vouchee be taken after the return day of writ of summons, 4 Taunt. 452. Or if the writ on which it is suffered has not a proper title, as on a Sunday, or other *dies non juridicus*, Wils. Rec. 60; the recovery will be erroneous.

A writ of error must be brought within twenty years after the recovery was suffered, 10 and 11 Will. III. c. 14. s. 1. unless the person bringing it labours under some disability, when he will have five years more after the disability is removed, s. 2. Within what time.

And the twenty years will never be computed from the time when the right accrued. *Lloyd* v. *Vaughan*, Str. 1257.

A writ of error lies to revoke a revovery by any person who has a right, or who would have a right if the recovery had not been suffered. Thus the tenant in tail, or his issue in tail, may bring a writ of error, *Henningham and Windham's case*, Leon. 346; and in default of issue, the remainder-man or reversioner; *Swan* v. *Broome*, 1 Bl. 496. *Cockman* v. *Furrer*, T. Raym. 641. *Darcy* v. *Jackson*, Palm. 224; and the writ should state generally the nature of the plaintiff's right, *Wright* v. *Mayor of Wycombe*, Cro. Eliz. 468; Burr. 410. After the recovery is reversed, if it appear that the writ of error was brought by a person who had not the right to bring it, the reversal will be vacated. *Anon.* 5 Mod. 396. By whom it maybe brought.

A person who has conveyed away his interest in the lands, *Wright* v. *Mayor of Wycombe*, *ubi sup.*, or who has released his right to the person in whose favour the recovery operates, Cro. Eliz. 469, cannot bring a writ of error.

Where the error is in the process, the recovery may be reversed in the Court of Common Pleas; but where it is otherwise, it can only be reversed by writ of error in the Court of King's Bench. Where the recovery may be reversed.

So a writ of error to reverse a recovery suffered in a county palatine, can only be brought in the King's Bench, Davies, 62.

But a recovery before the justices of the borough court of Chester must be reversed in the court of the County Palatine. 43 Eilz. c. 15. s. 6.

Recoveries in courts not of record, shall be reversed by writ of false judgment. 5 Cru. Dig. 485.

A recovery may be reversed by writ of error, as to some of the parties, and stand good as to others. Hob. 278. *Pigot* v. *Russel*, Cro. Eliz. 115. Or as to part of the property included therein. Ld. Raym. 179. Partial reversal.

Other points relating to the reversal of recoveries.

In considering the disabilities of infants, feme coverts, and others, the subject of reversals of recoveries has been touched upon.

In addition to what is there given, the following points may be mentioned :—

A recovery suffered to carry into effect an usurious contract, may be avoided. Touch. 19. 13 Eliz. c. 8.

So also a recovery which is suffered to secret uses to defeat a purchaser, comes within the 27 Eliz. c. 4. Touch. 19; but it seems doubtful whether in such a case the recovery would be vacated, or whether a reconveyance would be ordered. See *Hubert's* case, Cro. Eliz. 531. 12 Co. 123. 2 Eq. Ca. Ab. 474.

And in any other case where a conveyance has been taken by fraud, although a court of equity cannot set aside the proceedings in the court in which the recovery was suffered, *Clark* v. *Ward*, Prec. Cha. 150. 1 B. P. C. 137; yet a reconveyance will be decreed.

If a recovery is suffered in the Court of Common Pleas, of lands in ancient demesne, the lord, but he only, may bring a writ of deceit, and annul the recovery; and he may do this, although five years have elapsed since the last proclamation; 10 Co. 50 a. *Zouch* v. *Thompson*, Ld. Raym. 177. Salk. 210: and thus also a recovery may be annulled as to part of the lands only, and be good as to the residue. 1 Roll. Abr. 775. F. N. B. 222: but until the recovery is so annulled, the lands will be held in frank fee; but if it be annulled, the lands again become ancient demesne. Holt, 60.

The mode of suffering a recovery of lands of ancient demesne is regulated by the 59 Geo. III. c. 80.

Equitable recoveries.

Miscellaneous Points.—The principal rules, as to recoveries of equitable estates, have been already given in 1 Byth. 16.

Recoveries by copyholders.

If an estate tail may be created in copyholds by the custom of the manor, the entail may be barred by a recovery, although there be no special custom to warrant it. *Dell* v. *Higden*, Moo. 358. Carter, 23.

How to prove a recovery.

The proper mode of proving a recovery in England, is by the exemplification; and in Wales, by an exemplification of the enrollment under the judicial seal of the shire, town, or county, where the recovery was suffered; 27 Eliz. c. 9. s. 8. If the recovery was suffered in a county palatine, the exemplification must be under the seal of the county palatine; and this seal need not be proved, as the exemplification will be evidence of itself. Dy. 276; cited *Olive* v. *Gwin*, 2 Sid. 146. *Tooker* v. *Duke of Beaufort*, Sayer, 276. Hard. 118.

To explain more clearly the preceding observations, the mode of proceeding in a recovery with double voucher in the most simple man-

ner, will here be briefly given. For the more minute directions, and the forms not given here, Mr. Hand's work may be consulted.

The tenant, as has been before observed, is generally the solicitor of the person suffering the recovery, and he, therefore, generally appears in person. It is, however, almost always inconvenient to the vouchee to appear in court in person; he therefore, generally appears by attorney. The demandant appears neither in person nor by attorney. Tenant appears generally in person. Vouchee by attorney.

The first thing to be done, is to prepare the *præcipe*, which gives the instructions for the writ of entry, and contains the names of the parties, the description of the parcels, and the place in which they are situate. If the vouchee is to appear by attorney, a *dedimus* for taking his warrant of attorney must be sued out, and the warrant of attorney will be taken acccordingly, by commissioners appointed for that purpose; and an affidavit of the due acknowledgment of the warrant of attorney must then be made by one of the commissioners. Præcipe.

When the warrant of attorney has been acknowledged, it should be taken together with the *dedimus* to the cursitor, who will, thereupon, make out the writ of entry, which is as follows:

George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Cornwall, greeting. Command [*Richard Barton*] that justly and without delay he render to [*Thomas Jones*], (*the parcels described particularly*) which he claimeth to be his right and inheritance, and into which the said [*Richard*] hath not entry but after the disseisin which [*John Evans*] thereof unjustly and without judgment hath made, to the said [*Thomas*] within thirty years now last past, as he saith, and whereof he complaineth that the aforesaid [*Richard*] deforceth him; and unless he shall do so, and the said [*Thomas*] shall give you security to prosecute his suit, then summon by good summonses the said [*Richard*], that he be before our Justices at Westminster, on the morrow of the Purification of the Blessed Virgin Mary, to shew why he will not do it; and have you there the summoners and this writ. Witness ourself at Westminster, the day of , in the 9th year of our reign. Writ of entry.

[*Cursitor's name.*]

When the acknowledgment of the vouchee has been taken, and the Passing at bar.

writ of entry has been sued out, the recovery is then to be *passed at bar*, when one of the prothonotaries records the tenant's appearance.

Fine. The writ of entry is then taken to the alienation office, where the fine due to the king is compounded or assessed by the commissioners, according to certain established rules.

Other writs. The *dedimus*, which is returnable into Chancery with the warrant of attorney, the affidavit of caption, &c. must then be taken to the cursitor, who will thereupon make out the *mittimus* and *transcript*, which are two writs, the one directed to the justices of the Court in which the recovery is to be suffered, and the other to the sheriff, and directing them to do what is right in the matters referred to them, and which are mere forms.

The writ of summons and of seisin must then be prepared, which are as follows :—

Writ of summons. George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Cornwall, greeting. Summon by good summoners, [*Arthur Sims*], and [*Mary*] his wife, that they be before our Justices at Westminster, from Easter day, in three weeks, to warrant to [*Richard Barton*] (*the description of the parcels, same as in the præcipe*), which [*Thomas Jones*] in our court, before our said justices at Westminster, claims as his right against the said [*Richard*], by our writ of entry *sur disseisin en le post;* and whereupon the said [*Richard*], in our said court, hath vouched the said [*Arthur*] and [*Mary*] to be summoned in your county to warrant against the said [*Richard*]; and have you there the summoners, and this writ. Witness Sir Nicholas Conyngham Tindal, Knight, at Westminster, the day of February, in the 9th year of our reign.

Return.

Summoners, { [*John Denn,*] / [*Richard Fenn.*] }

[A. B.] Esq. Sheriff.

Writ of seisin. George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to the Sheriff of Cornwall, greeting. Know you, that [*Thomas Jones*], in our court, before our justices at Westminster, hath recovered his seisin against [*Richard Barton*], (*the particular description of the parcels*) by our writ of entry *sur disseisin en le post*, and therefore we

command you, that without delay you cause full seisin of the tenements aforesaid, with the appurtenances, (*the general description of the parcels*), to be delivered to the said [*Thomas*], and in what manner you shall have executed this our precept you make appear to our Justices at Westminster, on the morrow of the Ascension of Our Lord; and have you there this writ. Witness Sir Nicholas Conyngham Tindal, Knight, at Westminster, the day of April, in the 9th year of our reign.

[H.] (*Attorney's name.*)]

Return thereto.

By virtue of this writ to me directed, on the 5th day of May, in the year within written, I caused full seisin of (*the general description of the parcels*) within specified, with the appurtenances, to be delivered to the within named [*Thomas*], as I am within commanded.

[A. B.] Esq. Sheriff.

The summons roll and recovery roll, which recapitulate the proceedings in the recovery, are then prepared; and lastly, the *exemplification*, which is as follows:— Summons roll. Recovery roll.

Exemplification.

George the Fourth, by the grace of God of Great Britain and Ireland King, Defender of the Faith, to all to whom these presents shall come, greeting. Know ye, that among the pleas of land enrolled at Westminster, before Sir Nicholas Conyngham Tindal, Knt., and his brethren, our Justices of the Bench, in the term of Easter, in the 9th year of our reign, upon the (198*th and* 199*th rolls*), it is thus contained: Elsewhere as it appears of the term of Saint Hilary last past, upon the (175*th roll*), it is thus contained: Cornwall to wit. [*Thomas Jones*], in his proper person, demanded against [*Richard Barton*], (*the particular description of the parcels*) as his right of inheritance, and unto which the said [*Richard*] hath not entry, but after the disseisin which [*John Evans*] thereof unjustly and without judgment hath made to the said [*Thomas*] within thirty years, &c.; and whereupon he says, that he was seised of (*the general description of parcels*), in his demesne, as of fee and right in time of peace, in the time

Exemplification.

Count against tenant.

of our lord the king that now is, by taking the profits thereof, to the value, &c. and into which, &c. and thereof he bringeth suit, &c.; and the said [*Richard*], in his proper person, cometh and defendeth his right, when, &c.; and thereupon vouches to warrant [*Arthur Sims*], and [*Mary*] his wife, to be summoned in the county aforesaid; let him have them there from Easter day, in three weeks, by the aid of the court, &c. the same day is given to the parties aforesaid, here, &c.; and upon this the said [*Richard*] appoints in his stead [H. I.] and [K. L.] his attornies, jointly and severally, against the said [*Thomas*], to gain or lose in the plea aforesaid; at which day here cometh as well the said [*Thomas*], in his proper person, as the said [*Richard*], by the said [H. I.] his attorney; and the said [*Arthur*] and [*Mary*] being summoned, &c. likewise come by [R. H.] their attorney, and freely warrant (*the general description of the parcels*) to the said [*Richard*], &c.; and thereupon the said [*Thomas*] demandeth against the said [*Arthur*] and [*Mary*], tenants by their own warranty, (*the general description of the parcels*) in manner aforesaid; and whereupon he saith, that he was seised of (*the general description of the parcels*) in his demesne, as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, &c. and into which, &c. and whereof he bringeth suit, &c.; and the said [*Arthur*] and [*Mary*], tenants by their own warranty, defend their own right, when, &c.; and therefore, &c. further vouch to warrant [*Peter Ball*], who is present here in court, in his proper person, and freely warranteth to them the (*general description of parcels*). *And* hereupon the said [*Thomas*] demandeth against the said [*Richard*], tenant by his own warranty the (*general description of parcels*), in manner aforesaid, &c. *And* whereupon he saith, that he was seised (*the general description of the parcels*) in his demesne, as of fee and right, and in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, &c., and into which, &c., and whereof he bringeth suit, &c.; and the said [*Richard*], tenant by his own warranty, defendeth his right, when, &c., and saith, that the said [*John*] did not disseise the said [*Thomas*]

His defence, and award of summons.

Appointment of his attornies.

Appearance of the parties.

Warranty of vouchees.

Count against them.

Their defence.

His appearance and warranty.

Count against him.

His defence.

of (*the general description of parcels*), as the said [*Thomas*] by his writ and declaration above doth suppose; and of this he putteth himself upon the country, &c.; and the said [*Thomas*] thereupon craveth leave to imparl, and he hath it, &c.; and afterwards the said [*Thomas*] cometh again here into court, in this same term, in his proper person; and the said [*Peter*], although solemnly called, cometh not again, but departeth in contempt of the court, and maketh default; therefore it is considered that the said [*Thomas*] recover his seisin against the said [*Richard*] of (*the general description of parcels*), and that the said [*Richard*] have of the land of the said [*Arthur*] and [*Mary*], to the value, &c.; and further, that the said [*Arthur*] and [*Mary*] have, of the land of the said [*Peter*], to the value, &c. *And* the said [*Peter*], in mercy, &c. *And* hereupon the said [*Thomas*] prays a writ of our lord the king, to be directed to the sheriff in the county aforesaid, to cause full seisin of (*the general description of the parcels*), to be delivered to him; and it is granted to him, returnable here on the morrow of the Ascension of our Lord, "at which day the said [*Thomas*] cometh here into "court, in his proper person; and the sheriff, namely, "[A. B.] now returneth, that he, by virtue of the said "writ to him directed, on the 5th day of May in the same "term, caused full seisin of (*the general description of the "parcels*) to be delivered to the said [A.], as by the said "writ he was commanded," &c. *All* and singular which premises, at the request of the said [*Thomas*], by the tenor of these presents, we have commanded to be exemplified. In testimony whereof we have caused our seal appointed for sealing writs in the bench aforesaid, to be affixed to these presents. Witness, Sir Nicholas Conyngham Tindal, Knight, at Westminster, the day of , in the 9th year of our reign.

(*Attorney's name.*)

Imparlance.

Judgment.

Award of writ of seisin.

Return.

II. Recovery Deeds.

Deeds to declare uses of recovery.

A recovery is necessarily imperfect as an assurance, if the uses to which it is suffered are not declared; and the deed for this purpose is the part of the transactions which most commonly comes before the conveyancer.

Where no uses are declared.

If no uses are declared by any deed or writing, and the recovery does not itself express them either directly or indirectly, by a consideration or otherwise, it will enure to the use of the parties, according to their former estates, except that the tenant in tail will acquire under the resulting use an estate in fee simple. But if there be a consideration, the recovery would enure to such uses as the consideration would require. 2 Co. 76 a.

And where nothing appears on the face of the recovery by which it may be inferred to what uses the recovery was suffered, parol evidence will be admitted to shew that it was intended to enure to the use of the demandant; for though the statute of frauds, 29 Car. II. c. 3. s. 7. enacts that all declarations of trust must be in writing, signed by the party enabled by law to declare the trust, or his last will in writing; yet this does not apply to resulting trusts, or trusts by implication, and therefore in this case parol evidence is admissible. *Lord Altham* v. *Lord Anglesea*, Salk. 676. Holt, 733.

So if only some of the parties to the recovery were parties to the deed declaring its uses, it will operate only on their interests, and therefore where it is doubtful in which of several persons the freehold is, they should all join in the deed for making the tenant. So also all persons having the legal estate as mortgagees, &c. should join. *Row* v. *Popham*, Dougl. 24.

The deed which regulates the uses of the recovery should always be by indenture. If it is executed before the suffering of the recovery, it is said to *lead* the uses; if it is executed afterwards, it is said to *declare* the uses.

By the 4 Ann. c. 16. after reciting that doubts had arisen under the statute of frauds, whether declarations of the uses of fines and recoveries were valid, it was enacted, that all subsequent declarations by deed should be as valid as if the statute of frauds had never been made.

It is a doubtful point in practice, whether a deed *declaring* the uses of a recovery must be by deed indented, or whether a mere writing without seal will be sufficient. This point is discussed by Mr. Sugden, in his edition of Gilbert's Uses, 111. n., and to this note the reader is referred.

Who may be parties to.

The deed to lead or to declare the uses is considered as making, with the recovery, only one conveyance; Str. 274. 2 Co. 75 a.; and the recovery will be construed as having relation to the deed, and will support it in points in which, considered merely as a deed, it would be invalid: as for instance, it will render it binding on a feme covert, or an infant, if they be parties, Lord Raym. 289. 2 Co. 58 a.; or a person of unsound mind, 2 Co. 58. a.: but the recovery deed will be construed as a deed, and the same words for limiting estates are necessary thereto as in any other deed. *Egerton's* case, Cro. Jac. 525. And it is always improper, although frequently done, to exercise any power given by virtue of the recovery, until the recovery is actually suffered.

As to what will pass by it.

If the recovery deed clearly shews what was intended to be included n the recovery, the recovery will be confirmed accordingly. Poph. 105.

Where enrolment of recovery will be dispensed with.

By the 14 Geo. II. c. 20. s. 4. it is enacted, that where any person has purchased, for a *valuable consideration*, any tenements or hereditaments, whereof a recovery or recoveries, is, are, or were necessary to be suffered, such person, and all claiming under him, having been in possession of the purchased estate or estates from the time of such purchase, may, after the end of twenty years from the time of such purchase, produce in evidence the deed or deeds making a tenant to the writ of entry, and declaring the uses of the recovery or recoveries; and the deed or deeds so produced shall in all courts of law and equity be deemed and taken as sufficient evidence for such purchaser, and those claiming under him, that such recovery was duly perfected, according to the purposes of such deed or deeds, in case no record can be found of such recovery, or the same shall appear not to be regularly entered on record, provided that the persons declaring the uses of the recovery had a sufficient estate to make a tenant to such writ, and to suffer such recovery.

14 Geo. 3. c. 20. only extends to purchasers for valuable consideration.

It is to be observed, that the benefit of the statute is only extended to a purchaser for a valuable consideration. Numerous recoveries are suffered for the purpose of carrying family arrangements into effect; and here it would seem no advantage could be taken of the statute. I am not aware of any decided case on this point; but it has occurred in practice to take an objection to a title on this ground, which was removed by the discovery, after a very diligent search, of the record of the recovery. It would be difficult to contend that it could have been removed in any other way.

Deed to lead the uses.

Where there is a deed to lead the uses, and the recovery is conformable to that deed, no parol averment will be admitted to shew that the recovery was to other uses. *Dowman's case*, 9 Co. 10. b. Ld. Raym. 155. 289. But where there are two previous deeds, or where the recovery

varies in some respects from the deed, Ld. Raym. 289. 2 Co. 76. a., parol evidence will be admissible to shew to what uses the recovery was to be suffered. But where there is a mere writing, which varies from the deed, parol evidence is not admissible. Ld. Raym. 289. 5 Co. 26. a.

And if no fresh agreement can be proved, the recovery will enure to the uses declared by the previous deed, although it may differ from it in some slight particulars; 1 Atk. 7; 5 Co. 25, b.

Where there are two deeds.

If there are two deeds previous to the recovery, the recovery will enure to the uses declared by the last. *Countess of Rutland's case,* 5 Co. 25, b.

And this will be the same, although the second deed include more, and extends to other property than the first; 5 Co. 25, b.; and parol evidence will not be admissible to prove that the parties intended that the recovery should enure to the uses of the first deed. 5 Co. 25, b.

But the second deed will not prevail, unless it is executed by all the persons having an interest in the lands. See *Stapilton* v. *Stapilton,* 1 Atk. 7.

Deeds to declare the uses.

A deed to declare the uses of the recovery may be executed at any time after the recovery, during the life and continuance of the ownership of the person suffering the recovery, if it appear that the recovery was intended to enure to the uses thereby declared; *Bushell* v. *Burland,* 11 Mod. 196. Holt, 733.

Where a recovery is suffered by a husband and wife, and uses are declared by the husband, the recovery will enure to those uses until it appear that they were not the uses intended. *Swanton* v. *Raven,* 3 Atk. 105. 2 Co. 57, a.

See further on recovery deeds, the notes to the succeeding precedents.

DEED *of* BARGAIN *and* SALE, *by* TENANT IN TAIL *in possession, for the purpose of making a Tenant to the Præcipe, in order to suffer a Common Recovery to bar the Entail, and acquire an Estate in Fee Simple.* — (Simple Form.)

BY TENANT IN TAIL. SIMPLE FORM.

THIS INDENTURE, made the (*a*) day of , BETWEEN [A. B.] (*b*) of &c. of the first part; [C. D.] of &c. of the second part; and [E. F.] of &c. of the third part; WITNESSETH, (*c*) that for barring, docking, and destroying all estates tail of the said [A. B.] of and in the messuages or tenements, lands, hereditaments and premises, hereinafter described, and intended to be hereby bargained and sold, and their appurtenances, and all remainders and reversions expectant or depending thereupon, and all conditions and collateral limitations annexed thereto, And in consideration of the sum of ten shillings (*d*)

Parties.

Testatum, that for barring all estates tail, &c.

and in consideration of 10*s*.

(*a*) The date of a recovery deed should be on a day within the term, or before the end of the great sessions or assizes in which the recovery is suffered. 14 Geo. II. c. 20. Date.

(*b*) Where the tenant in tail, as in this instance, is in possession, he should be of the first part; but where he is only tenant in tail in remainder, and the person possessed of the freehold joins in the recovery, such person should be of the first, and the tenant in tail of the second part. Parties.

(*c*) The deed or will creating the recital should, in general, be recited; and the right to suffer the recovery should be made to appear on the face of the deed; but where brevity is of consequence, as in the above case, or where it would be imprudent to disclose the creation of the estate tail, all recitals may be omitted. For all the usual recitals, see the succeeding forms. Recitals.

(*d*) As this deed is a bargain and sale, a valuable consideration is necessary to its validity; *Barker* v. *Keat*, 2 Mod. 252, and Vol. VI. 439. Where the recovery deed is a lease and release, or other assurance, however, a valuable consideration should never be omitted, for the Consideration.

BY TENANT IN TAIL.

of lawful money of Great Britain and Ireland, by the said [C. D.] to the said [A. B.], paid at or immediately before the sealing and delivering of these presents, (the receipt whereof is hereby acknowledged), (*e*) HE, the said [A. B.], *Hath* granted, bargained, and sold, and by these presents *Doth* grant, bargain, and sell, unto the said [C. D.] and his heirs, ALL THAT messuage or tenement, situate, &c.; and also, all that other messuage or tenement, with the garden, orchard, and outbuildings thereto belonging, situate, &c.; and also all that close or piece or parcel of ground, situate, &c.; Together (*f*) with, &c. *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby bargained and sold, or intended so to be, and their appurtenances (*g*), unto and to the use of the said [C. D.] and his heirs; *To the intent* that he, the said [C. D.], may be immediate tenant of the actual freehold of the said messuages or tenements, lands, hereditaments, and premises, hereby bargained and sold, or intended so to be, and their appurtenances, so that one or more good and perfect common recovery or common recoveries, with double voucher, may be had and suffered of the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances; and in order thereto, and for that purpose, it is hereby agreed and declared between and

tenant in tail bargains and sells to C. D.

parcels.

Habendum in fee,

to the intent that C. D. may become tenant of the freehold of the premises, in order that one or more common recovery or recoveries may be suffered of the same.

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reason mentioned, *ante*, p. 89; as if a consideration were inserted in the deed, it might bring it within the 14 Geo. II. c. 20, even although the recovery were to effectuate any other transaction than a mere *purchase*.

Granting part.

(*e*) Where the tenant in tail is not in possession, he need not join in the words of grant. As to the operative words in a bargain and sale, see Vol. VI. 441.

General words.

(*f*) General words should always be inserted in recovery deeds, as a reference to them may often support a recovery, which would otherwise be invalid.

(*g*) These words are often introduced, but are not necessary, as the bargainee takes the legal estate by force of the statute of uses, and no use can, in fact, be declared of his seisin.

BY TENANT IN TAIL.

Agreement as to the manner of suffering the recovery or recoveries.

by the parties to these presents, that it shall be lawful for the said [E. F.], or any other demandant or demandants, at the costs and charges of the said [A. B.], his executors or administrators, before the end of this instant term, or in any other subsequent term, to sue forth and prosecute, against the said [A. B.], out of his Majesty's high court of Chancery, one or more writ or writs of entry, "*sur disseisin en le post*," returnable, and to be returned, before his Majesty's justices of the Court of Common Pleas, at Westminster, and to demand thereby of the said [C. D.], the said messuages or tenements, lands, hereditaments and premises hereby bargained and sold, or intended so to be, and their appurtenances, by such apt, good, sufficient, and proper names, number of messuages and acres, quantities, qualities, and other descriptions, as shall be deemed necessary or proper to pass the same; *And* that the said [C. D.] shall in his own proper person, or by his attorney or attornies, lawfully authorized in that behalf, appear to the said writ, or each of the said writs, and vouch to warranty the said [A. B.]; *And* that the said [A. B.] shall in his own proper person, or by his attorney or attornies, lawfully authorized in that behalf, appear gratis, and freely enter on the warranty of the said [C. D.] and taking the same on himself, vouch over to warranty the common vouchee of the said Court of Common Pleas for the time being; *And* that the said common vouchee shall thereupon appear gratis, and freely enter on the warranty of the said [A. B.], and take the same on himself, and imparle, and then make default, so that judgment may be given on the said writ, or each of the said writs, for the said [E. F.], or other the demandant or demandants, to recover the said messuages or tenements, lands, hereditaments, and premises hereby bargained and sold, or intended so to be, and their appurtenances, against the said [C. D]; *And* for the said [C. D.], to recover in value against the said [A.B.], and for the said [A.B.], to recover over in value against the said common vouchee, as is usual in such cases; *And* that upon the recovery, or each of the recoveries, which shall be so had and suffered, as aforesaid, execution may be sued and prosecuted by, and seisin had, taken, and delivered unto the said [E. F.], or other the demandant

BY TENANT IN TAIL

or demandants accordingly: *And* that all other acts and things necessary, proper, and expedient, shall be done for the purpose of suffering and perfecting one or more common recovery or common recoveries of the said messuages or tenements, lands, hereditaments, and premises hereby bargained and sold, or intended so to be, and their appurtenances, with double voucher to dock the said estates tail therein of the said [A. B.], and the remainders, limitations over, and reversions thereupon expectant or depending; *And* it is hereby agreed and declared, between and by the said parties to these presents, that immediately upon and after judgment obtained, and seisin had and taken upon such recovery or recoveries as aforesaid, the said recovery or recoveries, and all other recoveries, conveyances, and assurances whatsoever, of the said messuages or tenements, lands, hereditaments, and premises hereby bargained and sold, or intended so to be, and their appurtenances, (so far as such recovery or recoveries respectively comprise or affect the same messuages or tenements, lands, hereditaments, and premises, or any of them, and so far as the parties to these presents can lawfully or rightfully direct the uses thereof), shall operate and enure, and be adjudged, deemed, construed, and taken to operate and enure to the use of the said [A. B.], his heirs and assigns for ever, *And* to and for no other use, intent, or purpose whatsoever. IN WITNESS, &c.

Declaration that the recovery or recoveries shall enure to the use of the tenant in tail, his heirs and assigns for ever.

BY TENANT IN TAIL. VARIATIONS FOR BARRING DOWER, &c.

RELEASE *of a Capital Messuage or Mansion-House, and other Hereditaments to a* TENANT *to the* PRÆCIPE, *for the purpose of suffering a Common* RECOVERY, *to bar an Entail and Remainder over; with Variations for the* WIFE *of the Tenant in Tail joining in the Recovery in order to bar her* DOWER, *and for Recovery being suffered with Treble Voucher.*

THIS INDENTURE, made the day of , BETWEEN [W. S.] (*a*) of, &c. of the first part; [A. L.] of, &c. of the second part; and [J. P.] of, &c. of the third part; WHEREAS [W. S.] formerly of, &c. (the grandfather of the said [W. S.] party hereto, and hereinafter called [W. S.], the grandfather), was at the time of making his will, hereinafter recited, and from thenceforth to the time of his decease, seised of, or well entitled to, for an estate of inheritance in fee simple in possession, the messuage or tenement, lands, hereditaments, and premises, hereinafter particularly described, and intended to be hereby granted and released, and their appurtenances; and being so seised or entitled as aforesaid, *Did* in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date the day of , and did thereby give and devise the same messuage or tenement, lands, hereditaments, and premises, and their appurtenances

Parties.

Recital of the will by which the intail is created.

(*a*) If the wife joins, says,

" and [ ] his wife."

Dower.

A recovery with treble voucher is very rare, as it is only necessary where a tenant in tail has created an estate tail out of his own estate, and there are two estates tail, or where a tenant for life may have some unbarred estate tail in the lands.

Treble voucher.

BY TENANT IN TAIL.

unto his son [W. S.], (the father of the said [W. S.], party hereto, and hereinafter called [W. S., the father], and his assigns, during his life, without impeachment of waste, *Save* and except as in the said will is mentioned; with remainder *To* [A. B.] and [C. D.], in the said will respectively described, and their heirs, during the life of the said [W. S.], the father, *In Trust* for him the said [W. S.], the father and his assigns, and by the usual ways and means to preserve the contingent estates and remainders thereinafter limited or devised, from being defeated or destroyed; with remainder *To* the first son of the body of the said [W. S.], the father, and the heirs male of the body of such first son lawfully issuing; with divers remainders over. *And* whereas the said [W. S.], the grandfather, departed this life soon after making his said will, without having in any manner altered or revoked the same, and on or about the day of , his said will was duly proved by the executors thereof, in the prerogative court of the Archbishop of Canterbury. AND WHEREAS the said [W. S.], the father, departed this life some time in or about the month of leaving the said [W. S.] party hereto, his only son. AND WHEREAS the said [W. S.] party hereto, is desirous that the said messuage or tenement, lands, hereditaments, and premises, hereinafter particularly described, and intended to be hereby granted and released, and their appurtenances, should be discharged from his said estate in tail male therein, under the said will of the said [W. S.], the grandfather, and all remainders and reversions thereupon expectant or depending (*b*), and that the same messuage or tenement, lands, hereditaments, and premises, and their appurtenances, should be assured and limited *To* the uses hereinafter declared and

The death of the testator, and probate of his will.

The death of a tenant for life under the will.

The desire of the tenant in tail that the messuage, &c. should be discharged from his estate in tail male therein, and be limited to the uses after declared;

DOWER.

(*b*) If dower is to be barred, add,

"and also from all right or title to dower which the said [ ], the wife of the said [W. S.] party hereto, now hath, or can or may have in or out of the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances;"

BY TENANT IN TAIL.

contained concerning the same. *And* for that purpose(*c*) the said [W. S.], party hereto, hath agreed to convey the said messuage or tenement, lands, hereditaments, and premises, and their appurtenances, unto, and to the use of the said [A. L.] as hereinafter is mentioned, and to suffer a common recovery of the same, in such manner as is hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that for carrying the said desire of the said [W. S.] party hereto, into effect, and in pursuance and performance of the said agreement, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [A. L.] to the said [W. S.] party hereto, paid at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), HE the said [W. S.] party hereto, *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, and confirm unto the said [A. L.] (*in his actual possession, &c. reference to lease for a year*), and his heirs, ALL THAT capital messuage or tenement, with the yards, gardens, and outbuildings thereto belonging, situate and being in the parish of , in the county of , formerly in the occupation of , then of the said [W. S.], the grandfather, afterwards of the said [W. S.], the father, and now of the said [W. S.] party hereto. *And* also all that close or piece, or parcel of land or ground, situate and being in aforesaid, on the side of the said messuage or tenement, and premises hereinbefore described, containing by a estimation, acres or thereabouts, formerly in the occupation of, &c. *And* also all and singular other the hereditaments and premises (if any) situate and being in aforesaid, which by the said will of the said [W. S.], the grandfather, were devised to the said [W. S.], the father, for his life, with remainder to his first son in tail male, as hereinbefore is mentioned. *Together* with, &c. (*general words, &c.*)

and the agreement to suffer a common recovery.

Testatum, whereby tenant in tail conveys

to the tenant to the præcipe and his heirs,

parcels.

Sweeping clause.

(*c*) If the wife joins, alter this recital thus:— Dower.

"it hath been agreed, that the said [W. S.] party hereto, should convey, &c. *as above*, and that he and the said [ ], his wife, should join in suffering, &c." *as above*.

BY TENANT IN TAIL.

And the reversion, &c. *And* all the estate, &c. To HAVE AND TO HOLD the said messuage or tenement, lands, hereditaments, and all and singular other the premises hereby granted, and released, or intended so to be, and their appurtenances, unto the said [A. L.], and his heirs; *To* the use of him, the said [A. L.], and his heirs. *To* the intent that he the said [A. L.] may be immediate tenant of the actual freehold of the said messuage or tenement, lands, hereditaments, and premises hereby granted and released, or intended so to be, and their appurtenances, so that one or more good and perfect common recovery, or common recoveries, with double voucher, may be had and suffered of the same messuage or tenement, lands, hereditaments, and premises, and their appurtenances; *And* in order thereto, and for that purpose, it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [J. P.], or some other person or persons, at the costs and charges of the said [W. S.], party hereto, his executors or administrators, before the end of this present term, or in any subsequent term, to sue forth and prosecute against the said [A. L.] out of his Majesty's High Court of Chancery, one or more writ or writs of entry, "*sur disseisin en le post*," returnable before his Majesty's Justices of the court of Common Pleas, at Westminster, and to demand thereby of the said [A. L.], the said messuage or tenement, lands, hereditaments and premises, hereby granted and released, or intended so to be, and their appurtenances, by such apt, good, and sufficient names, number of messuages, and acres, quantities, qualities, and other descriptions, as shall be deemed necessary or proper to pass the same. *And* that the said [A. L.], shall in his own proper person, or by his attorney or attorneys, lawfully authorised in that behalf, appear to the said writ, or each of the said writs, and vouch to warranty the said [W. S.] party hereto (*d*). *And* that the said [W. S.] party hereto (*e*), shall in his

Habendum in fee,

to the intent that A. L. may be tenant of the freehold;

so that one or more recovery or recoveries may be suffered;

Agreement as to the mode in which the recovery or recoveries shall be suffered;

Dower.

(*d*) "and [ ], his wife."

(*e*) "and [ ], his wife, shall in their own proper persons, or by their attorney, &c."

BY TENANT IN TAIL.

own proper person, or by his attorney or attornies, lawfully authorized in that behalf, appear gratis, and freely enter on the warranty of the said [A. L.], and taking the same on himself (*f*), vouch over to warranty (*g*) the common vouchee for the time being of the said court of Common Pleas, and that the said common vouchee shall thereupon appear gratis, and freely enter on the warranty of the said [W. S.] party hereto (*h*), and take the same on himself, and imparle, and then make default, so that judgment may be given on the said writ, or each of the said writs, for the said [J. P.], or other the demandant or demandants, to recover the said messuage or tenement, lands, hereditaments and premises, hereby granted and released, and their appurtenances, against the said [A. L.], and for the said [A. L], to recover in value against the said [W. S.] party hereto (*i*), and for the said [W. S.] party hereto (*k*), to recover in value against the said common vouchee of the said court, as is usual in such cases; *And* that in all and every the recovery and recoveries, which shall be so had and suffered, as aforesaid, execution may be sued out and prosecuted by, and seisin had, taken and delivered unto the said [J. P.], or other the demandant or demandants accordingly; *And* that all other acts and things shall be done and executed, which shall be thought necessary and proper to be done and executed for the purpose of suffering and perfecting one or more common recovery or recoveries of the said messuage or tenement, lands, hereditaments and premises, hereby granted and released, or intended so to be, and their appurtenances, with double voucher, to dock the said estate in tail male therein of the said [W. S] party hereto, and the remainders, limitations

and that all proper and necessary acts to carry the intention of the parties into effect shall be done and executed.

(*f*) "themselves." Dower.

(*g*) If the recovery is suffered with treble voucher, the first tenant in tail should vouch the second tenant in tail, who should vouch the common vouchee. Treble voucher.

(*h*) "and [ ], his wife." Dower.

(*i*) "and [ ], his wife."

(*k*) "and [ ], his wife."

BY TENANT IN TAIL.

over, and reversions thereupon expectant or depending (*l*): *And* it is hereby agreed and declared between and by the said parties to these presents, that immediately upon and after judgment obtained, and seisin had and taken upon such recovery or recoveries as aforesaid, the said recovery or recoveries, and all other recoveries, conveyances, and assurances whatsoever, of the said messuage or tenement, lands, hereditaments and premises hereby granted and released, or intended so to be, and their appurtenances, shall operate and enure, and be adjudged, deemed, construed, and taken to operate and enure, *To* the use of the said [W. S.] party hereto, and his assigns, during his life, without impeachment of or for any manner of waste; *And* after the determination of that estate, by forfeiture or otherwise, in his lifetime, *To* the use of the said [J. P.], and his heirs, during the life of the said [W. S.] party hereto, *In* trust for him, the said [W. S.], party hereto, and his assigns, and to prevent the present or any future wife of the said [W. S.] party hereto, from being entitled to dower in or out of the said premises, or any part thereof, and from and after the determination of the estate hereinbefore limited to the use of the said [J. P.], and his heirs, during the life of the said [W. S.] party hereto, as aforesaid, *To* the use of the said [W. S.] party hereto, his heirs and assigns for ever. IN WITNESS, &c.

Declaration, that the recovery or recoveries, when suffered, shall enure,

To the usual uses to bar dower.

Dower.

(*l*) "and to bar and extinguish all right and title to dower therein or thereto of the said [ ], the wife of the said [W. S.] party hereto."

BY TENANT FOR LIFE AND TENANT IN TAIL.

BARGAIN AND SALE *by Tenant for Life and Tenant in Tail, for the purpose of making a Tenant to the* PRÆCIPE, *to suffer a common* RECOVERY, *in order to bar an Estate Tail, the Premises being in Two Counties; Declaration that the Recovery shall Enure to such Uses as Tenant for Life and Tenant in Tail shall jointly appoint, and in Default of such Appointment, to Uses for their Benefit: Declaration for making void the Bargain and Sale on the Non-payment of* 100,000*l.*; *with Variations for the Circumstances of the Recovery being suffered for the Benefit of a* PURCHASER.

THIS INDENTURE, made the day of , BETWEEN [*father*] of, &c. of the first part; [*son*] (the eldest son of the said [*father*] by his late wife deceased,) of the second part; [*tenant*], of the third part; and [*demandant*], of the fourth part. (*a*) WHEREAS,

Parties.

Recital that under a will,

(*a*) If the recovery is suffered for the benefit of a purchaser, make "(*purchaser*) of the fifth part;" and (if so intended), "(*trustee to bar dower*) of the sixth part."

PURCHASER.

Instead of the short recital above given, the will creating the entail, and the death of the testator, may be recited at length; as *ante*, p. 95. The following recitals may then be introduced:—

Other forms of recitals.

"AND WHEREAS, the said [*tenant in tail*] is desirous that the said manors or lordships and hereditaments hereinafter described, and intended to be hereby bargained and sold, with their appurtenances, should be discharged from the said estate tail of the said [*tenant in tail*] therein, and all other estates tail, and from all remainders, and limitations over, on such estate or estates tail, expectant or depending, and that the same should be assured and limited

Desire to bar entail.

BY TENANT FOR LIFE AND ENANT IN TAIL.

tenant for life and tenant in tail are seised of their several estates.

under and by virtue of the last will and testament of [W. M.] deceased, bearing date, &c. the said [*father*] is seised of or entitled to the manors or lordships and hereditaments hereinafter mentioned, and intended to be hereby bargained and sold, with their rights, members, and appurtenances, for an estate for his own life, with the immediate remainder expectant on the decease of him the said [*father*] to the said [*son*], and to the heirs male of his body. NOW THIS INDENTURE WITNESSETH, that (*b*) for barring, docking, destroying, defeating, and extinguishing the said estate tail of him the said [*son*], and all other estates tail, and all remainders, limitations, reversions, estates, charges, conditions, and contingencies thereupon respectively expectant or depending, of and in the said manors or lordships, and hereditaments; (*c*) *And* in consideration of the sum of ten shillings of lawful, &c. to the said [*father*] paid by the said [*tenant*], at or before the sealing and delivery of these presents, (the

Testatum, whereby for barring the estate tail, and for a nominal consideration, tenant for life conveys to the tenant to the præcipe.

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to the uses and in the manner hereinafter expressed and declared concerning the same. AND WHEREAS, the said [*tenant for life*], in consideration of the natural love and affection which he hath for his said son, the said [*tenant in tail*] hath agreed to join in making a tenant to the writ of entry for the purpose of suffering a common recovery of the said manors or lordships and hereditaments, in the manner hereinafter mentioned;"

Agreement by tenant for life to join.

PURCHASE. If the recovery is suffered on a purchase, then, after the recital of the will, introduce a recital of a contract for purchase, as *ante*, Vol. VI. p. 272; and then the recital of the desire to suffer the recovery to bar the entail, with the alteration of

"AND WHEREAS, the said [*purchaser*] is desirous," &c.

Recitals. (*b*) Where the intent of the recovery is recited, as *ante*, p. 102, these words should be omitted.

PURCHASE. (*c*) On a purchase, say,

"And for limiting and assuring the same to the use of the said [*purchaser*], his heirs and assigns for ever;"

Or, if the premises are to be limited to uses to bar dower,

"to the uses and in the manner hereinafter mentioned, for the benefit of the said [*purchaser*]."

receipt whereof is hereby acknowledged), He the said [*father*], *Hath* granted, bargained, and sold, and by these presents *Doth* grant, bargain, and sell unto the said [*tenant*], and his heirs, All that, &c. (*parcels*), Together with (*general words*), *And* the reversion, &c. *And* all the estate, &c. To have and to hold the said manors or lordships, messuages, farms, lands, tenements, tythes, rents, and all and singular other the premises hereby bargained and sold, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*tenant*], and his heirs, (*d*) during the joint lives of them the said [*tenant*] and the said [*father*], To the end, intent, and purpose, that the said [*tenant*] may become the actual tenant of the immediate freehold of the said manor or lordships, hereditaments, and all and singular other the premises hereby bargained and sold, or intended so to be, with the appurtenances, in order that one or more common recovery, or common recoveries, may be had and suffered, of the said manors or lordships, and hereditaments, in such manner as hereinafter is expressed; *And* for that purpose it is hereby declared and agreed, between and by the parties to these presents, that it shall and may be lawful to and for the said [*demandant*], or some other person or persons, as of this present . . term, or any subsequent term, at the costs and charges of the said [*father*], to sue forth and prosecute against the said [*tenant*], out of his Majesty's High Court of Chancery, two or more writs of entry *sur disseisin in le post*, &c. to be returned before the Justices of his Majesty's court of Common Pleas at Westminster, against the said [*tenant*], thereby demanding the said manors or lordships and hereditaments hereby bargained and sold, with

BY TENANT FOR LIFE AND TENANT IN TAIL.

Habendum unto tenant for the lives of himself and the tenant for life, in order that he may become tenant to the præcipe.

Manner of suffering the recovery.

(*d*) Any estate of freehold will be sufficient to support the recovery. It frequently happens that a tenant for life, joining in a recovery, does not wish to part with the whole of his life estate; as thereby, doubts may arise as to the extinguishment of his powers, &c. In this case the habendum may be as above. By this limitation a reversion will remain in the tenant for life, which will preserve all contingent remainders, and all powers incident to his estate.

Estate of the tenant to the præcipe.

BY TENANT FOR LIFE AND TENANT IN TAIL.

their rights, members, and appurtenances, by such descriptions as will effectually ascertain and comprise the same, one of the said writs to be for such of said manors or lordships, and other hereditaments, as are situate, lying, and being in the county of , and the other of such writs to be for such manors or lordships as are situate, lying, and being in the county of ; and that to each of the said writs the said [*tenant*] shall appear gratis in his own proper person, and shall vouch to warrant the said premises the said [*son*], who shall thereupon appear in his own proper person, or by his attorney lawfully authorised in that behalf, and enter into warranty, and vouch over to warranty the common vouchee of the said court of Common Pleas, who shall thereupon appear and imparle, and depart in contempt of the court, so that judgment shall be thereupon had and given for said [*demandant*], to recover the said manors or lordships and hereditaments, with their rights, members, and appurtenances, against the said [*tenant*], and for the said [*tenant*] to recover in value against the said [*son*], and for the said [*son*] to recover in value against the common vouchee aforesaid, *And* that execution shall and may be thereupon awarded and had accordingly, *And* that all other things may and shall be done and executed, which shall be needful and requisite for the purpose of suffering and perfecting such common recoveries as aforesaid; *And*

Declaration, that the recovery shall enure to the use of

it is hereby agreed and declared between and by the parties to these presents, *That* immediately from and after the perfecting thereof, as well the said common recoveries so as aforesaid, or in any other manner, or at any other time, to be had and suffered, and also all other common recoveries, fines, conveyances, and assurances in the law whatsoever, either already had, made, levied, suffered, or executed, or hereafter to be had, made, suffered, levied, or executed, of the said manors or lordships and hereditaments, hereby bargained and sold, or intended so to be, or any of them, or any part thereof, either alone, or jointly with any other hereditaments by or between the parties to these presents, or any of them, or whereunto they, or any of them are, is, or shall be party or parties, privy or privies, shall, as to the said manors or

lordships and other hereditaments, hereby bargained and sold, or intended so to be, and their appurtenances operate and enure(*e*), *To the use* of such person or persons, for such estate or estates, with such powers or limitations over, upon, and for such trusts, intents, and purposes, charged and chargeable with such sums and sum of money, and with, under, and subject to such powers, conditions, limitations, declarations, and agreements, as the said [*father*] and [*son*] shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by both of them sealed and delivered in the presence of and attested by two or more credible witnesses, from time to time, direct or appoint, and in default of, and until such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, *To the use* of the said [*father*], and his assigns, during his life, without impeachment of waste, and from and after the decease of the said [*father*], *To the use* of the said [*son*], his heirs and assigns for ever(*f*). PROVIDED ALWAYS NEVERTHELESS, and it is hereby agreed and declared between and by the parties to these presents, that if the said [*son*], his heirs, executors or administrators, shall not pay, or cause to be paid to the said [*father*], for his own proper use and benefit, the sum of one hundred thousand pounds, of lawful money of Great Britain and Ireland, on or before the day of now next ensuing the date of these presents, then the bargain and sale by these presents made by the said [*father*] as aforesaid, but not

BY TENANT FOR LIFE AND TENANT IN TAIL.

such person as tenant for life and tenant in tail shall by deed appoint;

and in default of appointment, To the use of the tenant for life, during his life, with remainder to the use of the tenant in tail in fee.

Declaration that if tenant in tail shall not pay tenant for life 100,000*l.*, bargain and sale to be void.

(*e*) On a purchase, say,

PURCHASE.

"To the use of the said [*purchaser*], his heirs and assigns for ever:"

Or if so intended, to the usual uses to bar dower, for which, see Vol. VI. p. 276.

Covenants for title by the tenant for life and tenant in tail, qualified as to their own acts, with the purchaser, should conclude the deed. See the proper form, Vol. VI. p. 390, and the references there made.

(*f*) Or, if such be intended, To the usual uses to bar dower in favor of the son.

BY TENANT FOR LIFE AND TENANT IN TAIL.

the uses, trusts, intents, and purposes to, upon, or for which the recoveries hereinbefore covenanted to be suffered are hereby directed to operate and enure, shall be void, and it shall and may be lawful to and for such [*father*] to enter into, hold, or enjoy all and every the said manors or lordships and hereditaments, hereby bargained and sold, or intended so to be, with their rights, members, and appurtenances, as in his former estate (*g*). In witness, &c.

Estate of tenant to the præcipe.

(*g*) The recovery will be equally valid, although the estate of the tenant to the *præcipe* should terminate immediately after the recovery is suffered. See *ante*, p. 70. The object of this clause is to reserve the estate of the tenant for life, and the powers annexed thereto, as it was formerly the practice for the tenant for life to convey his whole estate. The preservation of the power is, however, more effectually obtained by limiting the estate for the joint lives of the tenant for life, and the tenant to the *præcipe*, as mentioned in p. 103. This clause, therefore, although often inserted, is useless in this precedent, and should be omitted.

BY TENANTS IN COMMON TO PURCHASER.

BARGAIN *and* SALE *by Tenants in Common in Tail, under a Will, to a* TENANT *to the Præcipe, for the purpose of suffering a Common* RECOVERY *to Enure to Uses to Bar* DOWER, *for the benefit of a* PURCHASER.

THIS INDENTURE, made the day of , in the year of our Lord 1829, BETWEEN [T. F.] of, &c. Parties. of the first part; [B. F.] of, &c. of the second part; [H. F.] of, &c. of the third part; [C. F.] of, &c. of the fourth part; [R. F.] of, &c. of the fifth part; [*tenant*] of, &c. of the sixth part; [*demandant*] of, &c. of the seventh part; [*purchaser*], of, &c. of the eighth part; and [*trustee to bar dower*] of, &c. of the ninth part. WHEREAS [W. F.] of, &c. was, at the time of the execution of his will hereinafter recited, and thenceforth to the time of his decease, seised of or well entitled in fee simple in possession to the hereditaments and premises comprised in and described by the said schedule hereunder written, or hereunto annexed, with their appurtenances, subject to the several yearly fee-farm rents, or rent charges affecting the same, which are mentioned in the said schedule; AND WHEREAS the said [W. F.] being so seised and entitled, as hereinbefore is mentioned, in such manner as the law requires for rendering valid devises of freehold estates, duly signed and published his last will and testament in writing, bearing date the day of , and thereby (amongst other things), gave and devised all and singular his freehold messuages, lands, tenements, and hereditaments, unto his wife [S.], for the term of her life, with remainder to his children the said [T. F.], [B. F.], [H. F.], [C. F.], and [R. F.], as tenants in common in tail, with cross remainders between or amongst them in tail, with remainder or reversion To his own right heirs for ever; AND WHEREAS

Recital that W. F. was seised of premises.

Will of W. F. devising premises to his wife, for life, then to his five children as tenants in common in tail.

Death of W. F.

BY TENANTS IN COMMON TO PURCHASER.

the said [W. F.] departed this life on or about the day of , without having altered or revoked his said will, and leaving the said [S.] his widow, and the said [T. F.], [B. F.], [H. F.], [C. F.], and [R. F.], his children him surviving; AND WHEREAS the said [S. F.] departed this life on or about the day of ; AND WHEREAS the said [T. F.], [B. F.], [H. F.], [C. F.], and [R. F.], thereupon became, and are entitled, under or by virtue of the entail created by the hereinbefore recited will of the said [W. F.], to the messuages or tenements, hereditaments, and premises comprised in and described by the said schedule hereunder written, or hereunto annexed, with their appurtenances, (but subject to the said fee-farm rents or rent charges mentioned in the same schedule,) in the following shares and proportions, that is to say; each of them the said [T. F.], [B. F.], [H. F.], [C. F.], and [R. F.], is entitled to one undivided fifth part or share of and in the said messuages or tenements, hereditaments, and premises; AND WHEREAS the said [T. F.], [B. F.], [H. F.], [C. F.], and [R. F.], have contracted and agreed with the said [*purchaser*] for the sale to him of their respective undivided parts or shares of and in the said messuages or tenements, hereditaments, and premises comprised in and described by the said schedule hereunder written, and the inheritance thereof in fee simple in possession, free from all incumbrances, except as in the same schedule is mentioned, at or for the following prices or sums, (that is to say); for the undivided part or share of the said [T. F.], the sum of pounds; for the undivided part or share of the said [B. F.] the sum of pounds, (*and thus as to the other three shares*), which said several sums of pounds, pounds, pounds, pounds, and pounds, make together the sum of pounds: AND WHEREAS the said [*purchaser*] hath this day paid the sum of pounds to the said [T. F.], as he the said [T. F.] doth hereby admit and acknowledge; AND WHEREAS the said [*purchaser*] hath this day paid the sum of pounds to the said [B. F.], as he the said [B. F.] doth hereby admit and acknowledge; (*and thus as to the other shares in the purchase money*); AND WHEREAS, for completing and effectuating the said

Death of testators' wife.

That tenants in tail are entitled to their several shares in the premises.

Contract for purchase of their shares.

Payment of consideration money.

Agreement for recovery.

purchase, it hath been agreed that by a common recovery the respective estates tail of the said [T. F.], [B. F.], [H. F.], [C. F.], and [R. F.], in their respective undivided parts or shares of and in the said messuages or tenements, hereditaments, and premises, and the remainder and remainders upon the said respective estates tail, expectant or depending, should be docked, barred, and destroyed. BY TENANTS IN COMMON TO PURCHASER.

NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreements for completing and effectuating the said purchase; *And* in consideration of the several sums of pounds, pounds, pounds, pounds, and pounds, so paid by the said [*purchaser*] to the said [T. F.], [B. F.], [H. F.], [C. F.], and [R. F.], as hereinbefore is mentioned, THEY the said [T. F.], [B. F.], [H. F.], [C. F.], and [R. F.], according to their several estates and interests, *Have*, and every of them *Hath* granted, bargained and sold, and confirmed, *And* by these presents *Do*, and every of them *Doth* grant, bargain, sell, and confirm unto the said [*tenant*] and his heirs, ALL those messuages or tenements, hereditaments, and premises comprised in, and described by the said schedule hereunder written, or hereunto annexed, *Together* with, &c. (*general words*); *And* the reversion, &c.; *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises hereby bargained and sold, or intended so to be, with their and every of their appurtenances, unto the said [*tenant*], his heirs and assigns for ever, to the intent (*as ante*, p. 92): AND *it is hereby agreed and declared*, between and by the parties hereto, that from and immediately after the suffering and perfecting the said common recovery or recoveries so as aforesaid, or in any other manner suffered, and seisin shall be had and taken, to operate and enure *To such uses*, &c. (*uses to bar dower* (*as ante*, p. 100) *or in Vol. VI. p.* 276. *Covenants for title by tenants in common, as in Vol. VI. p.* 335—338). IN WITNESS, &c.

Testatum, whereby tenants in common convey

parcels.

Habendum.

Declaration that the recovery shall enure to uses.

COVENANT TO SUFFER RECOVERY.

COVENANT *in a Conveyance of Five Sixth Parts or Shares to a* TENANT *to the Præcipe, for the Purpose of suffering a Common* RECOVERY, *that an Infant, in whom the other Sixth Part or Share is vested, will, within Six Months after attaining Twenty-one, suffer a* RECOVERY *of such Part or Share, for the Benefit of a* PURCHASER.

Recitals.

(*Recite the history of the title, according to the circumstances; then that* [infant] *is an infant under the age of twenty-one years; contract for purchase; and the agreement to suffer a recovery of the five sixth parts, as ante, p.* 108). AND WHEREAS it hath been agreed, that the said [*covenantor*] should enter into the covenants hereinafter contained, in respect of the undivided equal sixth part or share of the said [*infant*], of and in the said messuages or tenements, hereditaments, and premises hereinafter described, and intended to be hereby bargained and sold, with their appurtenances, (*payment of part of purchase money, as ante,* p. 108, *to other vendors, and of infant's share to trustees, as in Vol. VI.* p. 419; *then the first witnessing part, whereby the five sixths are conveyed in the usual way to the tenant, to the intent that a recovery may be suffered to the use of the purchaser, in fee, or as the case may be; then the second witnessing part as follows*): AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement, on the part of the said [*covenantor*], and in consideration of the sum of pounds so paid by the said [*purchaser*] to the said [*trustees of infant*], as hereinbefore is mentioned, HE the said [*covenantor*] *Doth* hereby for himself, his executors and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that within six calendar months after he the said [*infant*] shall have attained his age

Covenant that the infant, when he attains 21, will suffer a recovery of his share.

of twenty-one years, He the said [*infant*] shall and will, at the joint costs and charges of the said [*infant*] and [*purchaser*], or their respective executors or administrators, by one or more common recovery or recoveries, dock, bar, and destroy his estate tail in his undivided sixth part or share of and in the messuages or tenements, hereditaments, and premises, whereof the said five undivided sixth parts or shares are hereby bargained and sold, or intended so to be, and the remainders and reversions on the same estate tail expectant and depending, and shall and will, at the like costs and charges, do and execute all such further and other acts as shall be necessary, or as counsel shall advise, for confirming these presents, so far as they relate to the said undivided sixth part or share of him the said [*infant*]; *And* it is hereby agreed and declared, between and by the parties hereto, that from and immediately after suffering and perfecting the said common recovery or recoveries, so as aforesaid, or in any other manner to be suffered, and seisin shall be had, taken, and delivered accordingly, the said common recovery or recoveries, and all and every common recovery or recoveries, fines, conveyances, and assurances in the law whatsoever, heretofore suffered, levied, had, made, or executed, or hereafter to be suffered, levied, had, made, or executed, of the said sixth part or share of the said [*infant*], of and in the said messuages or tenements, hereditaments, and premises hereby bargained and sold, or intended so to be, with their appurtenances, or any of them, or any part thereof, either alone or jointly with any other hereditaments, or whereunto they or any of them are or shall be parties or privies, so far as the parties to these presents can lawfully direct the use thereof, shall operate and enure *To the use* of the said [*purchaser*], his heirs and assigns for ever. (*Or if the other five sixths have been limited to uses to bar dower, say,* "to such uses, and for such intents and purposes as are hereinbefore expressed and declared, of, to, and concerning the other five equal undivided sixth parts or shares, of and in the said messuages or tenements, hereditaments and premises hereby bargained and sold, or intended so to be, with their appurtenances.") *And* it is hereby agreed and declared, between and by the parties hereto, that the said

COVENANT TO SUFFER RECOVERY.

Agreement that the recovery, when suffered, shall enure to the uses hereinbefore declared of the first recovery.

Declaration of the trusts of

COVENANT TO SUFFER RECOVERY.

[*trustees of the infant*], and the survivor, &c. shall and will with all convenient speed lay out and invest the said sum of pounds so paid to them the said [*trustees*] by the said [*purchaser*], as hereinbefore is mentioned, in their or his names or name, in any of the parliamentary stocks or funds of Great Britain, and shall and will stand and be possessed of and interested in the said sum of pounds, [*infant's share in purchase money*] and the stocks, funds, and securities in which the same shall be invested, upon the trusts following, (that is to say); when, conformably to the covenant hereby for that purpose contained, the said estate tail of the said [*infant*], in his undivided sixth part or share of and in the said messuage or tenements, hereditaments and premises, and the remainders and reversions thereon expectant and depending, shall be docked, barred, and destroyed, and all such further and other acts and deeds as shall be necessary, or as counsel shall advise, shall have been done and executed; then, and in such case, the said [*trustees*], or the survivor of them, and the executors and administrators of such survivor, shall stand and be possessed of and interested in the said sum of pounds, and the stocks, funds, and securities thereof, *In trust* for the said [*infant*], his executors, administrators, and assigns, to and for his and their own use and benefit; But if the said [*infant*] shall die before he shall have attained the age of twenty-one years, or, if after he shall have attained that age, his said estate tail, and the remainders and reversions thereon expectant and depending, shall not, conformably to the covenant hereinbefore for that purpose contained, be docked, barred, and destroyed; and all such further and other acts and deeds as shall be necessary, or as counsel shall advise, for confirming these presents, so far as they relate to the said undivided sixth part or share of the said [*infant*], shall not be done and executed; Then, and in either of the said cases, the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, shall stand, and be possessed of, and interested in the said sum of pounds, and the stocks, funds, and securities thereof, upon the trusts following, (that is to say); *In trust* for the said [*purchaser*], his executors, administrators, and assigns,

the infant's share in the purchase money.

Trustees to invest the same, and stand possessed thereof upon trusts: (that is to say) when the recovery shall have been suffered,

In trust for the infant;

but if infant shall die, or if the intail shall not be barred, in trust for purchaser.

COVENANT TO SUFFER RECOVERY.

for his and their absolute use and benefit, and the remainders and reversions thereon expectant or depending, shall be docked, barred, and destroyed, and such further necessary acts and deeds shall be done and executed, the said [*purchaser*], his heirs and assigns, shall be molested and disturbed in their or his possession or enjoyment of the same undivided sixth part or share, or any part thereof, by the said [*infant*], or any person or persons claiming or to claim, by, from, through, or under him, or as his guardian or guardians for the time being; then, and in such case, the said trustees or trustee shall stand possessed of and interested in the said sum of pounds, and the stocks, funds, and securities thereof, *In trust* for the said [*purchaser*], his heirs and assigns, for his and their absolute use and benefit. PROVIDED ALWAYS, and it is hereby agreed, that in the mean time, and until such sum of pounds, and the stocks, funds, and securities thereof, shall become absolutely vested according to the trusts hereinbefore declared, the said trustees or trustee do and shall pay the interest, dividends, and annual produce of the same sum of pounds, and the stocks, funds, or securities thereof to, or permit the same to be received by the said [*infant*], or his guardian or guardians for the time being, by way of rent for the use and enjoyment by the said [*purchaser*], his heirs and assigns, of the said undivided sixth part or share of the said [*infant*] of and in the said messuage or tenements, hereditaments and premises, hereby bargained and sold, or intended so to be, with their appurtenances, from the day of the date of these presents, until the said sum of pounds, and the stock, funds, and securities thereof, shall have become absolutely vested as aforesaid.

Proviso that if purchaser shall be disturbed before suffering of recovery, trustees shall pay over purchase money to purchaser.

Trustees, until vesting of trust monies, to pay interest to infant.

COVENANT TO SUFFER RECOVERY.

Deed of Covenant *to suffer a Second Recovery where the First was erroneous on account of the* Marriage *of the Vouchee between the Times of executing the* Warrant *of* Attorney, *and the* Judgment *in the Recovery (indorsed on the Deed for making the Tenant to the Præcipe, for the former Recovery).*

Parties.

THIS INDENTURE, made the day of , Between [G. W.] the younger of, &c. and the within named [M. C.], (now the wife of the said [G. W.],) of the first part; the within named [E. C.] of the second part; the within named [T. C.] of the third part; and the within named [F. P.] of the fourth part. Whereas in pursuance of the covenant and agreement for that purpose contained in the within written indenture, a common recovery was suffered in his Majesty's Court of Common Pleas, at Westminster, in Hilary Term now last past, of the one equal undivided third part or share which by the said within written indenture was granted and released, or intended so to be, of and in the messuage or tenement, closes, lands, hereditaments, and premises therein mentioned and described, with their appurtenances, in which common recovery the said [F. P.] was demandant, the said [T. C.] tenant, and the said [M.], the wife of the said [G. W.], (then M. C.), vouchee; And whereas judgment was given in the said recovery, on the day of , upon the appearance and voucher of the said [M. C.], by her attorney authorised in that behalf, by a warrant of attorney under her hand taken and acknowledged on the day of ; but the said [M. C.] having intermarried with the said [G. W.], on the day of the same month, it is conceived that the appearance and voucher of the said [M. C.], by her attorney, as aforesaid, was void, and that the judgment founded there-

Recital that a recovery was suffered in pursuance of covenant.

That judgment was given by virtue of a warrant of attorney of vouchee, who afterwards married before judgment.

COVENANT TO SUFFER RECOVERY.

on was erroneous, and of no effect; AND WHEREAS, (*a*) by an order of the Court of Common Pleas, bearing date the day of , the said judgment in the said common recovery was reversed; AND WHEREAS it hath been agreed, that the said [G. W.] and [M.], his wife, should, in the present Michaelmas Term, suffer another common recovery of the said undivided third part or share which by the said within written indenture was granted and released, or intended so to be, of and in the messuages or tenements, closes, lands, hereditaments, and premises therein mentioned and described, with their appurtenances, and should join in the declaration of use thereof hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and for carrying the intent and meaning of the parties to the within written indenture into effect, and for the considerations therein expressed, *It is hereby agreed and declared*, between and by the parties to these presents, and particularly by and on the part of the said [G. W.] and [M.], his wife, that it shall and may be lawful to and for the said [F. P.], or some other person or persons, at the costs and charges of the said [G. W.], his executors and administrators, before the end of this present Michaelmas Term, or in any subsequent Term, to sue forth and prosecute, against the said [T. C.], out of his Majesty's High Court of Chancery, one or more writ or writs of entry, '*sur disseisin en le post*', returnable before his Majesty's justices of the Court of Common Pleas, at Westminster, and to demand thereby of the said [T. C.], the said one undivided third part or share which by the

Reversal of recovery.

Agreement to suffer a econd recovery.

Testatum, whereby it is agreed that it shall be lawful for the demandant in the first recovery to sue forth a proper writ and suffer another recovery.

(*a*) It is generally considered that a recovery which is defective to bar an entail for want of a proper tenant to the *præcipe*, or any other reason, is nevertheless good, as between the parties, until reversed; see *ante*, p. 80; and that the declaration of use in the recovery deed will draw out the estate from the demandant and vest it in the *cestui que use*, or *cestuis que use*; and it therefore seems necessary to the validity of the second recovery,—in case the judgment in the first recovery is not reversed,—that a conveyance of the legal estate of freehold under the uses of the first recovery deed should be made to the tenant in the second recovery, before it is suffered.

Defective recovery should be reversed.

COVENANT TO SUFFER RECOVERY.

said within written indenture was granted and released, or intended so to be, of and in the said messuages or tenements, closes, lands, hereditaments, and premises therein mentioned and described, and their appurtenances, by such good, apt, and sufficient names, number of messuages and acres, quantities, qualities, and descriptions, as shall be deemed necessary and proper to pass the same; *And* that the said [T. C.] shall in his own proper person, or by his attorney or attornies, lawfully authorized in that behalf, appear to the said writ, or each of the said writs, and vouch to warranty, the said [G. W], and [M.] his wife; and that the said [G. W.] and [M.] his wife shall, in their own proper persons, or by their attorney or attornies, lawfully authorized in that behalf, appear gratis, and freely enter on the warranty of the said [J. H.], and, taking the same on themselves, vouch over to warranty the said common vouchee for the time being, of the said Court of Common Pleas: and that the said common vouchee shall thereupon appear, gratis, and freely enter on the warranty of the said [G. W.] and [M.] his wife, an dtake the same on himself and imparle, and then make default, so that judgment may be given on the said writ, on each of the said writs, for the said [F. P.] or other the demandant or demandants, to recover the said undivided third part or share, which by the said within indenture was granted and released, or intended so to be, of and in the said messuages or tenements, closes, lands, hereditaments, and premises therein mentioned and described, and their appurtenances, against the said [T. C.], and for the said [T. C.] to recover in value against the said [G. W.] and [M] his wife, *And* for the said [G. W]. and [M.] his wife, to recover in value against the common vouchee of the said court, as is usual in such cases; *And that* upon all and every the recovery and recoveries which shall be had and suffered as aforesaid, execution may be sued out and prosecuted by, and seisin had, taken, and delivered unto the said [F. P.], or other the demandant or demandants accordingly; *And that* all other acts and things necessary and proper to be done and executed, for the purpose of suffering and perfecting one or more common recovery or recoveries of the said undivided third part

or share, which by the within indenture was granted and released, or intended so to be, of and in the said messuage or tenement, closes, lands, hereditaments, and premises therein mentioned and described, and their appurtenances, with double voucher, to dock the said estate tail therein of the said [M.], the wife of the said [G. W.], and the remainders, limitations over, and reversions thereupon expectant and depending, shall be made, done, and executed; *And* it is hereby agreed and declared between and by the said parties hereto, that immediately upon and after judgment had and obtained, and seisin had and taken upon such recovery or recoveries as aforesaid, the said recovery or recoveries, and all other recoveries, conveyances, and assurances whatsoever, of the undivided third part or share, which by the said within indenture was granted and released, or intended so to be, of and in the said messuage or tenement, closes, lands, hereditaments, and premises, therein mentioned and described, and their appurtenances, shall (so far as they respectively comprize or affect the said undivided third part or share, and so far as the parties hereto can lawfully or rightfully direct the uses thereof) operate and enure, and be adjudged, deemed, construed, and taken to operate and enure, *To the use* of the said [E. C.], his heirs and assigns for ever; *And* to and for no other use, intent, and purpose whatsoever. In witness, &c.

COVENANT TO SUFFER RECOVERY.

Declaration that the recovery shall enure to the use of E. C. in fee.

DEED TO DECLARE USES.

DEED *to declare the Uses of a common* RECOVERY *which has been already suffered.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*tenant in tail*] of, &c, of the first part; [*tenant to the præcipe*] of, &c. of the second part; and [*demandant*] of, &c. of the third part. (*Recite deed or will creating the estate tail*).

Recital of agreement to suffer recovery.

AND WHEREAS the said [*tenant in tail*] being desirous of barring his said estate tail in the said messuages or tenements, hereditaments, and premises hereafter described, and the remainders and reversion limited thereon, agreed to suffer a common recovery of the same hereditaments and premises:

That recovery was suffered.

AND WHEREAS a common recovery was suffered in Term last, of the said messuages or tenements, hereditaments, and premises hereinafter described, with the appurtenances, in which the said [*demandant*] was demandant, the said [*tenant*] was tenant, and the said [*tenant in tail*] was vouchee, who vouched over.

Testatum, whereby it is declared that the recovery shall enure to the use of tenant in tail in fee.

NOW THIS INDENTURE WITNESSETH, that it is hereby agreed and declared, between and by the parties hereto, that the said common recovery, or common recoveries, so suffered as aforesaid, and all and every other common recovery or recoveries, fines, conveyances, and assurances in the law whatsoever, heretofore suffered, levied, had, made, or executed, or hereafter to be suffered, levied, had, made, or executed, of ALL, &c. (*parcels*), *Together* with, &c. (*general words*), *And* the reversion, &c. so far as the parties to these presents can lawfully direct the uses thereof, operate and enure *To the use* of the said [*tenant in tail*], his heirs and assigns for ever (*a*).

(*a*) The better mode, perhaps, is to set out the parcels in the recital of the deed or will creating the entail, and then to state that for barring &c. a recovery was in Term suffered of the said premises by the description of messuages acres of land &c.,—that no uses have been declared of the recoveries,—and that the parties have therefore agreed to join in the declaration of uses after contained. In the declaration of uses, the parcels should be referred to as 'hereinbefore described.'

COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

DEED OF COVENANT *to surrender* COPYHOLDS (*a*) *into the Hands of the Lord, in order that a* CUSTOMARY RECOVERY *with double Voucher may be suffered, and that thereby an Estate Tail subsisting therein may be barred, for the Benefit of the* TENANT IN TAIL; *with Variations for the Circumstance of the Recovery being suffered for the Benefit of a* PURCHASER.

THIS INDENTURE, made the day of , in the year of our Lord , BETWEEN [*tenant in tail*] of the first part; [*tenant*], of the second part; and [*demandant*], of the third part. WHEREAS the said

Parties.

Seisin of tenant in tail.

(*a*) It has been mentioned before that a recovery may be suffered of copyholds, *ante*, p. 78, and this has been called the most solemn and proper way of barring an entail. *Dunn* v. *Green*, 3 P. Wms. 10; but see Vol. VI. p. 297, n. (*a*).

Recovery of copyholds.

It is not usual in such recoveries to have any deed for making a tenant to the plaint, but to suffer the recovery at once, which is by far the most safe and effectual plan.

The mode of suffering such a recovery is as follows: See 1 Watk. Cop. by Coventry, p. 222.—Suppose Robert Brampton to be tenant in tail, and desirous of barring the entail by recovery; in which recovery Henry Wilson is to be tenant to the plaint, Timothy Waldgrave, demandant; Robert Brampton to come in as a vouchee, and to vouch over Edmund Akehurst, the common vouchee of the court. In the first place, let the copyholds be surrendered to the use of Henry Wilson, to make him tenant to the plaint, and let Henry Wilson be admitted in the usual manner. Then let the stewart say—"You Timothy Waldgrave, being now in court, in your proper person, complain against Henry Wilson, of a plea of land (to wit), one messuage, &c. held of this manor, by copy of court roll, at the will of the lord, and thereupon you pray process to be awarded against him?—But you Henry Wilson voluntarily appear to answer to the said Timothy Waldgrave?

Form of recovery.

COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

[*tenant in tail*] is seised of or well entitled to the messuages or tenements, lands, and hereditaments hereinafter described, and covenanted to be surrendered, for an estate

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—And thereupon you Timothy Waldgrave demand against the said Henry Wilson the hereditaments aforesaid, with the appurtenances, as your right and inheritance; and say that you were seised of the same in your demesne as of fee and right, according to the custom of this manor, at the will of the lord; and into which the said Henry Wilson has not entry but after the disseisin of one Hugh Hunt, &c.; thereupon you Henry Wilson come and defend your right to the tenements aforesaid, with the appurtenances, and vouch over to warranty Robert Brampton?—To which you Robert Brampton appear?—And therefore you Timothy Waldgrave make the like demand against the said Robert Brampton as against the said Henry Wilson; and say, that you were seised of the tenements aforesaid, with the appurtenances, in your demesne as of fee and right, according to the custom of this manor, at the will of the lord, and into which the said Robert Brampton has not entry but after the disseisin of the said Hugh Hunt? Wherefore you Robert Brampton come and defend the right of the said Henry Wilson to the tenements aforesaid, with the appurtenances, and further call to warranty Edmund Akehurst?—To which you Edmund Akehurst appear? And you Timothy Waldgrave make the like demand against the said Edmund Akehurst as against the said Robert Brampton; and say, that you were seised of the tenements aforesaid, with the appurtenances, in your demesne as by fee and right, according to the custom of this manor, at the will of the lord; and into which the said Edmund Akehurst has not entry but after the disseisin of the said Hugh Hunt, &c.?—Whereupon you Edmund Akehurst come and defend the right of the said Henry Wilson; and say, that the said Hugh Hunt did not disseise the said Timothy Waldgrave, of the tenements aforesaid, as the said Timothy does by his plaint above pretend and alledge; and of this you put yourself upon this court, &c.?—And thereupon you Timothy Waldgrave crave leave of this court to imparl until four o'clock of the afternoon of this day? Therefore leave is granted to the said Timothy, and also unto the said Edmund, to the said hour?" Here let Timothy Waldgrave and Edmund Akehurst leave the court, and at four o'clock proceed: Timothy Waldgrave being being come into court, but Edmund Akehurst being absent, then let the steward say—"And now, after the imparlance to you by the court given, you Timothy Waldgrave appear?—Therefore let proclamation be made, that the said Edmund Akehurst also appear." Beadle: "O yes, &c.

tail in possession, according to the custom of the manor of , with divers remainders over; AND WHEREAS the said [*tenant in tail*] is desirous of barring the said

COVENANT TO SUFFER RECOVERY OF COPYHOLDS

Edmund Akehurst come into court, and answer to Timothy Waldgrave of a plea of land now pending between you; or judgment shall be entered against you for the tenements which he claims?" Steward: "Edmund Akehurst, although solemnly called, having made default, and standing in contempt of this court, let judgment be therefore entered against him, that the demandant recover the tenements claimed." Make three proclamations before judgment, thus;—Beadle: "O yes &c. If any can ought say why Timothy Waldgrave should not recover against Henry Wilson, Robert Brampton, and Edmund Akehurst, the tenements which he claims, let them come into court, and they shall be received." Steward: "But as none appears, it is considered by this court that the said Timothy Waldgrave recover his seisin of the tenements aforesaid, with the appurtenances, against the said Henry Wilson, and that the said Henry Wilson have of the lands and tenements of the said Robert Brampton, within the jurisdiction of this court, to the value of the tenements aforesaid. And the said Robert Brampton have of the lands and tenements of the said Edmund Akehurst, within the jurisdiction of this court, to the value of the tenements aforesaid, and that the said Edmund Akehurst be in mercy. And in pursuance of this judgment, you Timothy Waldgrave pray the precept of this court to be directed to Ishmael Cooke, the bailiff or beadle of this manor, whereby you may be put into the peaceable possession of the tenements aforesaid, with the appurtenances, according to the custom of the same manor? Wherefore let such precept issue, returnable here into this court without delay." Beadle afterwards appears. Steward: "You, Ishmael Cooke, the beadle of this manor of Faulhurst, appear, and say that you have delivered full and peaceable possession of the tenements aforesaid, to the said Timothy Waldgrave, as by the precept of this court to you directed was commanded?" Then admit Timothy Waldgrave, thus;—"And in confirmation and execution of the same recovery, the lord of this manor, by me his steward, now in full and open court, grants seisin of all and singular the tenements aforesaid, with the appurtenances, by this rod, according to the custom of this manor, unto you Timothy Waldgrave, to hold to you the said Timothy Waldgrave, and your heirs and assigns, at the will of the lord, according to the custom, &c. by the rents, duties, and services, &c." Then let Timothy Waldgrave, Henry Wilson, Robert Brampton, and Edmund Akehurst, surrender the tenements to the use of Robert Bramp-

COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

estate tail of the said [*tenant in tail*], and also the remainders limited thereupon (*b*), for the purposes and in the manner hereinafter mentioned. NOW THIS INDENTURE WIT-

Testatum, whereby tenant

ton, in the usual form; and let Robert Brampton be admitted. The recovery, when suffered, is thus entered on the roll:—

Recovery roll.

"AT THIS COURT came Robert Brampton, one of the copyhold or customary tenants of this manor, in his proper person, and surrendered into the hands of the lord of the manor aforesaid by the rod, and acceptance of his said steward, according to the custom of the said manor: *All* that customary or copyhold messuage, &c. to the use and behoof of Henry Wilson, of, &c. his heirs and assigns for ever, to whom the lord of the said manor, by his steward, granted seisin thereof by the rod: TO HAVE AND TO HOLD the said messuage, &c. unto him the said Henry Wilson, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, by the rents, duties, and services therefore due, and of right accustomed; *And* he was admitted tenant thereof in form aforesaid, but paid no fine to the lord, because his estate was only had for a further assurance, and his fealty was pardoned. And afterwards, at this same court, came Timothy Waldgrave in his proper person, and complained against the said Henry Wilson in a plea of land, (that is to say) of the said messuage, &c. and made protestation to prosecute his said plaint in this court, in the form and nature of a writ of right patent at common law, according to the custom of the said manor; and thereupon found pledges to prosecute the same in form aforesaid, (that is to say) John Doe and Richard Roe, and prayed that process might be thereupon awarded, according to the custom of the said manor, against the said Henry, returnable here at this court without delay. But the said Henry Wilson, being present here in court, voluntarily offered himself to answer unto the said Timothy Waldgrave, without such process unto him directed; whereupon the said Timothy demanded against the said Henry the said messuage, &c. within this manor and the jurisdiction of this court; and held of this manor, by copy of court roll, at the will

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PURCHASER.

(*b*) Where the recovery is to be suffered, for the benefit of a purchaser, recite contract for purchase, see Vol. VI. p. 297; and say,

"*And whereas* it hath been agreed, that the said estate of the said [*tenant in tail*], and the remainders limited thereupon, should be barred in the manner hereinafter mentioned." And see Vol. VI. p. 298.

NESSETH, that for docking, barring, and destroying all estates tail, and remainders over, and all estates and interests expectant thereon, of and in the said messuages and tene- COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

in tail covenants that he

of the lord, according to the custom of this manor, as his own right and inheritance, and whereof he was seised in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor, in time of peace, in the time of our lord the King that now is, by taking the profits thereof to the value, &c.; and that his right was such he offered, &c. *And* thereupon the said Henry came and denied the right of the said Timothy, when, &c.; and his seisin; of which seisin, &c. the whole, &c. and whatsoever, &c. and especially of the said messuage, &c. with the appurtenances in his demesne, as of fee and right, at the will of the lord, according to the custom of the said manor, and vouched to warrant the premises, with their appurtenances to the said Robert Brampton; who being likewise here present in court, also appeared freely without process unto him directed; *And* the said messuage, &c. with the appurtenances, unto him did warrant. Whereupon the said Timothy demanded against him the said Robert, tenant by his warranty aforesaid, the said messuage, &c. with the appurtenances, in form aforesaid, and whereof he said he was seised in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, &c.; *And that* his right was such he offered, &c. *And* thereupon the said Robert, tenant by his warranty aforesaid, came and denied the right of the said Timothy, when, &c. and his seisin; of which seisin, &c. the whole, &c. and whatsoever, &c. and especially of the said messuage, &c. and premises before mentioned, with the appurtenances in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor; and vouched to warrant the premises with the appurtenances, Edmund Akehurst, who being then present in court, also appeared freely, without process unto him directed; *And* the said messuage, &c. and premises before mentioned, with the appurtenants, unto him did warrant. Whereupon the said Timothy demanded against him the said Edmund, tenant by his warranty aforesaid, the said messuages, &c. and premises before mentioned, with the appurtenances, in form aforesaid, and whereof he said he was seised in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor in time of peace, in the time of our lord the King that now is, by taking the profits thereof, to the value, &c. and that his right was such he offered, &c. And thereupon the said Edmund, tenant by his warranty aforesaid, came and denied the right of

COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

ments, lands and hereditaments, (*c*) *And* in consideration (*d*) of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*demandant*] to the

will surrender the same.

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the said Timothy, when, &c. and his seisin, &c. of which seisin, &c. the whole, &c. of whatsoever, &c. and especially the said messuage, &c. and premises before mentioned, with the appurtenances in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor; and put himself upon homage of the said court, in the place and stead of the great assize at the common law, and prayed a recognition thereupon to be had, whether he had more right to have and to hold the said messuage, &c. and premises before mentioned, with the appurtenances, as tenant thereof by his warranty, so as he now holdeth the same, or the said Timothy, to have and to hold the said messuage, &c. and premises before mentioned, with the appurtenances, so as he above hath demanded the same. And thereupon the said Timothy prayed leave to imparl until four o'clock of the afternoon of the same day, and it was granted; and the same time was given to the said Edmund there, &c. And afterwards, at the said hour of four in the afternoon of the same day, the said Timothy came again into court; but the said Edmund returned not then into court, although he was solemnly called; but departed in contempt of the court, and made default. Whereupon in full and open court public proclamation was made, that if any one laid claim to the premises before mentioned, he should come in before final judgment should be given; but no one came; therefore, according to the custom of the said manor, it was considered by the court, that the said Timothy recover his seisin against the aforesaid Henry, of the said messuage, &c. and premises before mentioned, with the appurtenances; and that the said Henry have, of the lands and tenements of the said Robert, within the jurisdiction, &c. to the value, &c.: And that the said Robert have, of the lands and tenements of the said Edmund, within the jurisdiction, &c. to the value, &c.: And that the said Edmund be in mercy: And therefore the said Timothy prayed to the lord of the

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PURCHASE. (*c*) If the recovery is suffered on a purchase, say,

"and for limiting and assuring the same to the said [*purchaser*], in the manner hereinafter mentioned."

PURCHASER. (*d*) If the recovery is to be suffered for the benefit of a purchaser, the full form of the payment of the consideration and the receipt should be given, as *ante*, Vol. VI. p. 256.

said [*tenant in tail*] paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), He the said [*tenant in tail*] *Doth* hereby for himself, his heirs, executors, and admi-

COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

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manor aforesaid, a precept to be directed to Ishmael Cooke, the bailiff, as minister of the court aforesaid, to cause him the said Timothy, to have full seisin of the premises, with the appurtenances returnable then at the same court without delay; and it was granted: And afterwards, at the same court, came the said Ishmael, the minister or bailiff of this court, and returned that by virtue of the said precept to him directed, he the same day caused the said Timothy to have full seisin of the said messuage, &c. and premises hereinbefore mentioned, with the appurtenances; as by the said precept to him directed was commanded: By virtue of which recovery and seisin therefore had as aforesaid, the said Timothy entered into the said messuage, &c. and premises above mentioned, and the appurtenances, and was thereof seised in his demesne as of fee and right, according to the custom of the said manor: And being so seised, by virtue of the recovery and execution had and made in form aforesaid, the lord of the said manor, out of his special favour, for the better approbation, ratification, and confirmation of all and singular the premises, then in full court, by his said steward, did give and deliver unto the said Timothy, of the said premises, with the appurtenances full seisin, by the rod; To have and to hold the said messuage, &c. and all and singular the premises, with their appurtenances, unto him the said Timothy, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, by the rents, duties, and services therefore due, and of right accustomed; but he paid no fine to the lord, because this recovery was only had for further assurance; and his fealty was pardoned, and the said Timothy was admitted tenant thereof, in form aforesaid accordingly: And afterwards at the same court came the said Timothy Waldgrave, Henry Wilson, Robert Brompton, and Edward Akehurst, in their proper persons, and surrendered into the hands of the lord of the said manor, by the rod, and acceptance of the said steward, according to the custom of the said manor, the said messuage, &c. and all and singular the premises above mentioned, with their appurtenances, &c. recovered as aforesaid: To the use and behoof of the said Robert Brompton, his heirs and assigns for ever: To whom the lord of the said manor, by his steward, did then and there grant seisin thereof by the rod. To have and to hold the said messuages, &c. and premises before mentioned, with their appurtenances, unto him the said Robert Brompton,

COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

nistrators, COVENANT, promise, and agree with and to the said [*demandant*], his heirs and assigns, that HE the said [*tenant in tail*] shall and will, on the request, and at the costs and charges of the said (*e*) [*tenant in tail*], his heirs and assigns, at the next court to be holden for the manor of , in the county of , or as soon after as conveniently may be, either in person or by attorney, surrender and yield up, or cause or procure to be surrendered or yielded up, into the hands of the lord or lords, lady or ladies, for the time being, of the said manor, or otherwise, or well and effectually assure, according to the custom thereof, *To the use* and behoof of the said [*tenant*], his heirs and assigns, ALL THAT, &c. (*parcels*], and the reversion, &c. *And* all the estate, &c. *To* the intent that the said [*tenant*], or his heirs, may be admitted tenant to all and singular the said messuages or tenements, lands and hereditaments, in order that one or more good and perfect recovery or recoveries may, in due form of law, and according to the custom of the said manor, be had and suffered, of all and every the said messuages or tenements, lands, and hereditaments hereby covenanted to be surrendered, or intended so to be; *And* it is hereby declared and agreed, between and by the said parties to these presents, *That* it shall and may be lawful to and for the said [*demandant*], immediately after such admission as aforesaid, to bring or sue forth or prosecute out of the court of the said manor, according to the usual form in such cases accustomed, one or more plaint or plaints, in the nature of a writ or writs of entry *sur disseisin en le post*, thereby demanding by apt and convenient names, quantities, qualities, number of acres, and other descrip-

To the intent that a customary recovery may be suffered.

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his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, by the rents, duties, and services therefore due, and of right accustomed: And he was admitted tenant thereof, in form aforesaid; but he paid no fine to the lord; because this recovery was only had for further assurance; and he had aforetime made his fealty."

PURCHASE.

(*e*) If the recovery is suffered on a purchase, say, "the said [*purchaser*], his executors or administrators,"

tions, the said messuages or tenements, lands, and hereditaments hereby covenanted to be surrendered, or intended so to be, against the said [*tenant*], to which plaint or plaints the said [*tenant*] shall appear gratis, in his own person, or by his attorney lawfully authorised thereto, and vouch over to warranty the said [*tenant in tail*], who shall also appear gratis, in his own person, or by his attorney lawfully authorised thereto, and vouch over to warranty the common vouchee of the said court, who shall also appear and imparle, and after imparlance make default, so that judgment shall and may be thereupon had and given for the said [*demandant*] to recover the said messuages or tenements, lands, and hereditaments hereby covenanted to be surrendered, or intended so to be, against the said [*tenant*], and the said [*tenant*] to recover in value against the said [*tenant in tail*], and the said [*tenant in tail*] to recover in value against the said common vouchee, and that execution shall and may be had and awarded accordingly, and all and every other things be done necessary for the suffering and perfecting such common recovery or recoveries, with vouchers, as aforesaid, according to the usual form in such cases accustomed within the said manor; *And* it is hereby further agreed and declared, between and by the said parties hereto, as far as they respectively are interested, that immediately from and after the perfecting of the said customary recovery or recoveries, so as aforesaid, or in any other manner to be suffered of the said messuages or tenements, lands and hereditaments, and from time to time, when and so often as seisin thereof shall be delivered to the said [*demandant*], he and they shall and will forthwith surrender into the hands of the lord or lords, lady or ladies, for the time being, of the said manor, all and every the said messuages or tenements, lands and hereditaments, seisin whereof shall have been so delivered, *To the use* of the said [*tenant in tail*], (*f*) his heirs and assigns, *To* the

COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

Declaration that recovery shall enure to the use of tenant in tail in fee.

(*f*) If the recovery is suffered on a purchase, say, "*To the use* of the said [*purchaser*], his heirs and assigns,"

PURCHASE.

COVENANT TO SUFFER RECOVERY OF COPYHOLDS.

end and intent that he may be admitted tenant thereto; To HOLD to him and his heirs, at the will of the lord, according to the custom of the said manor, subject only to the rents, duties, suits, and services therefore due and of right accustomed. (*g*) IN WITNESS, &c.

PURCHASE.

(*g*) If the recovery is suffered on a purchase, the following declaration is sometimes introduced. It is however unnecessary, as the tenant in tail and tenant to the plaintiff would clearly be trustees for the purchaser in equity, without it, and he can have no *legal* right until the recovery is suffered.

"And it is hereby agreed between the said parties hereto, that until the said [*purchaser*] shall be admitted tenant to all and singular the said messuages or tenements, lands and hereditaments, to hold to him, his heirs and assigns for ever, freed and discharged of the said estate tail, and the reversions expectant thereon, and all other incumbrances except the said customary duties, suits, and services; the said [*tenant in tail*], and the said [*tenant*] and his heirs, shall and will stand and be possessed of the said messuages or tenements, lands and hereditaments, in trust, for the sole use and benefit of the said [*purchaser*], his heirs and assigns, and to be surrendered and disposed of, from time to time, as he or they shall direct or appoint."

Then insert covenants for title for copyholds, as ante, Vol. VI. p. 300.

BY TENANT IN TAIL IN PURSUANCE OF A WILL.

RELEASE *of One Third Share in a Messuage and other Hereditaments for the purpose of suffering a Recovery to Bar an Entail therein, with a Declaration of Uses of such Recovery, in favor of an Eldest Brother, in compliance with directions in that behalf contained, in the Will of the Father of the Tenant in Tail.*

THIS INDENTURE, made the day of ,

BETWEEN [A.] of, &c. of the first part; [X.], of, &c. [Y.] of, &c. and [Z.] of, &c. of the second part; [B.] of, &c. of the third part; [E. F.] of, &c. of the fourth part; and [G. H.] of, &c. of the fifth part: WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , the release being made, or expressed to be made, between [I.] of, &c. of the first part; [K.] of, &c. of the second part; and [L.] of, &c. and [M.] of, &c. of the third part (being the settlement executed previously to, and in contemplation of a marriage then intended, and shortly afterwards had and solemnized between the said [I.] and [K.], *All that* messuage, &c. situate at Gosberton, in the county of Lincoln (*parcels being set out fully*) with their appurtenances, were (for the considerations in the said indenture of release mentioned) granted and conveyed by the said [I.], unto the said [L.] and [M.], and their heirs, *To the use* of the said [I.] and his heirs, until the said then intended marriage should be had and solemnized, and after the solemnization thereof, *To the use* of the said [I.] and his assigns, during his life, without impeachment of waste, except wilful waste, in pulling down buildings and not rebuilding the same, with a limitation, *To the use* of the said [L.] and [M.] and their heirs, during the life of the said [I.], *In trust* for him and his assigns, and by the usual ways and means to preserve the contingent remainders

Parties.

Recital of the marriage settlement, whereby the estate is limited to the use of the husband for life, with remainder to trustees to preserve contingent remainders;

BY TENANT IN TAIL IN PURSUANCE OF A WILL.

thereinafter limited from being defeated or destroyed; *And* after the decease of the said [I.], *To the use* of the said [K.] and her assigns, during her life, without impeachment of waste, except wilful waste, in pulling down buildings and not rebuilding the same, with a limitation *To the use* of the said [L.] and [M.] and their heirs, during the life of the said [K.], *In trust* for her and her assigns, and by the usual ways and means to preserve the contingent remainders thereinafter limited from being defeated or destroyed. *And* after the decease of the survivor of them the said [I.] and [K.] *To the use* of all and every the child and children of the said [I.], by the said [K.] lawfully to be begotten, to be divided between or amongst them, if more than one, in equal shares, as tenants in common, and of the several and respective heirs of the body and bodies of all and every such child and children lawfully issuing. *And* if there should be a failure of issue of any such child or children, then as to the part or share, or parts or shares of such child or children whose issue should so fail, *To the use* of the remaining and other children, to be divided between or amongst them, if more than one in equal shares, as tenants in common, and of the several and respective heirs of his, her, and their body and bodies lawfully issuing. *And* in case there should be a failure of issue of all such children, but one; or if there should be but one such child, then *To the use* of such remaining or only child, and the heirs of his or her body, lawfully issuing. *And* for default of such issue, *To the use* of the said [I.], his heirs and assigns for ever. AND WHEREAS the said [K.] departed this life on or about the day of , leaving the said [I.], her husband, and three children by him, her surviving; namely, the said [A.] and [B.], and [C.] of, &c. gent. AND WHEREAS the said [I.] duly signed and published his last will and testament, in writing, bearing date on or about the day of , and thereby, after directing the payment of his debts and funeral expenses, gave and bequeathed unto his daughter the said [A.], the sum of pounds, to be paid to her as and when she should attain the age of twenty-one years, or be married with consent of her trustee thereinafter named. *And* the said testator gave,

remainder to the use of the wife in like manner:

remainder to the use of the children of the marriage in equal shares as tenants in common in tail.

remainder to the husband in fee.

The death of the wife, leaving her husband and three children.

The will of the husband,

whereby he gives a legacy of —*l.* to his daughter A. absolutely,

BY TENANT IN TAIL IN PURSUANCE OF A WILL.

devised, and bequeathed unto his eldest son the said [B.], all his (the said testator's) messuages, farms, lands, hereditaments, and premises, situate at Gosberton, in the county of Lincoln, To hold to him, his heirs and assigns for ever. *And* the said [*testator*] gave, devised, and bequeathed unto his second son the said [C.], all and singular his lands and tenements, situate at Uley, in the county of Gloucester, To hold to him the said [C.], his heirs and assigns for ever. *And* the said [*testator*] gave, devised, and bequeathed all the rest and residue of his estate and effects unto his said sons and daughter equally, to be divided between them as tenants in common, as and when they should respectively attain their age of twenty-one years. *And* the said [*testator*], by his said will, declared, that in case the settlement made upon his marriage with his late dear wife, should in any manner alter or vary the devise of the property thereby given and devised to his eldest son, the said [B.], so that it should be necessary for his said son [C.], and his said daughter [A.], (when they should attain the proper ages for that purpose) to join in conveying the same to the said [B.] agreeably to the devise thereinbefore contained; then that his said son [C.], and his said daughter [A.], should join in conveying the same accordingly; *And*, in case of the refusal of either of them to comply with his said will, when thereunto required by his said son the said [B.], then he the said testator did declare that the devise and bequest by his said will made to them, or such one of them as should so refuse as aforesaid, should be void, and the property so by him given, devised, or bequeathed to them, or such of them as should so refuse as aforesaid, should go to his said son the said [B], his heirs, executors, administrators, and assigns for ever, to whom the said testator gave, devised, and bequeathed the same accordingly: *And* the said testator appointed the said [X.], [Y.], and [Z.] joint executors and trustees of his said will, and guardians of the persons and estates of his said children during their minorities. (*Death of I. and probate of his will, as ante*). AND WHEREAS the said [A.] attained her age of twenty-one years on or about the day of now last past; AND WHEREAS the said [B.] is now an infant of the

the settled estate to his eldest son B. in fee,

and an estate at —— to his youngest son C. in fee,

and disposes of the residue of his estate to his three children equally,

and declares, that if his marriage settlement should interfere with the devise to his eldest son, his daughters and younger son should give effect to such devise, or forfeit the provision thereinbefore made for them,

and appoints executors.

Death of testator and probate of his will.

That the daughter has attained 21; but the sons are infants;

BY TENANT IN TAIL IN PURSUANCE OF A WILL.

age of twenty years or thereabouts, and the said [C.] is now an infant of the age of seventeen years or thereabouts; AND WHEREAS the said [A.] hath applied to the said [X.], [Y.], and [Z.], as such executors as aforesaid, for payment of the said legacy or sum of so given and bequeathed to her by the said recited will of the said [I.] as hereinbefore is mentioned; and she hath agreed, in compliance with the direction for that purpose contained in the said will of the said [I.], and in order to entitle herself to the said legacy or sum, to convey and assure unto the said [B.], his heirs and assigns, in manner hereinafter mentioned, her one equal undivided third part or share of and in the said messuages or tenements, lands, hereditaments, and premises, which were so comprised in and conveyed by the said hereinbefore recited indentures of the and days of as aforesaid; and which were so given and devised to the said [B.] by the said recited will of the said [I.] as hereinbefore is mentioned, and their appurtenances; AND WHEREAS the said [X.], [Y.], and [Z.], as such executors as aforesaid, have this day paid unto the said [A.] the sum of in satisfaction of the said legacy or sum of so given and bequeathed to her by the said will of the said [I.] as aforesaid, as she the said [A.] doth hereby admit and acknowledge: NOW THIS INDENTURE WITNESSETH, that, in pursuance and performance of the said agreement on the part of the said [A.], and in compliance with the direction in this behalf contained in the said will of the said [I.] as aforesaid, and for docking, barring, and destroying all estates tail in the said undivided third part or share of the said [A.] of and in the said messuage or tenement, lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore recited indentures of the and days of as aforesaid, and their appurtenances, and all rents, reversions expectant or depending thereupon, and all conditions and collateral limitations annexed thereto, and for conveying, limiting, and assuring the said undivided third part or share to the use of the said [B.], his heirs and assigns for ever; And also, in consideration of the sum of ten shillings of lawful money of Great Britain, by the

and applied for her legacy;

and agreed to make such conveyance to her eldest brother as directed by her father's will.

and the payment of the legacy.

Testatum, whereby the daughter, in consideration of the legacy, and in compliance with the directions of the will, and to bar entails,

BY TENANT IN TAIL IN PURSUANCE OF A WILL.

said [E. F.] to the said [A.] paid at, or immediately before &c. (the receipt, &c.) SHE the said [A.], at the request and by the direction of the said [X.], [Y.], and [Z.], and with the privity of the said [B.] (testified by their respectively being parties to, and sealing and delivering these presents), *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [E. F.] (in his actual possession, &c. *reference to lease for a year*) and his heirs, ALL THAT the one undivided third part or share of her the said [A.] of and in the said messuages or tenements, lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said recited indentures of the and days of as aforesaid, and their appurtenances; *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said undivided third part or share hereby granted and released, or intended so to be, of and in the said messuage or tenement, lands, hereditaments, and premises hereinbefore particularly described, and their appurtenances, unto the said [E. F.], and his heirs, *To the use* of him the said [E. F.] his heirs and assigns for ever; *To the intent* that he the said [E. F.] may be immediate tenant of the actual freehold of the said undivided third part or share hereby granted and released, or intended so to be, of and in the messuages or tenements, lands, hereditaments, and premises hereinbefore described, and their appurtenances; so that one or more good and perfect common recovery or common recoveries, with double voucher, &c. (*as ante, p.* 92.) *Declaration that the recovery, &c. should enure To the use* of the said [B.], his heirs and assigns for ever. (*Usual covenants for title from* [A.] *to* [B.], *the reference to the share and premises conveyed being similar to the reference to them in the habendum.*) IN WITNESS, &c.

conveys to E. F.

her third share in the settled estate.

Habendum to E. F. in fee.

To the intent that he may be tenant of the freehold for suffering one or more recovery or recoveries with double voucher.

WHERE THE LANDS ARE IN A COUNTY PALATINE, OR WALES.

BARGAIN AND SALE *of Lands situate in the County Palatine of* CHESTER, *to a Tenant to the Præcipe, to the intent that a Common Recovery may be suffered, and that a Tenant in Tail may acquire a Fee Simple; with Variations for the Circumstances of the Lands being situate in the other* COUNTIES PALATINE, *or in* WALES; *and where the Recovery is suffered on a* PURCHASE.

Parties.

THIS INDENTURE, made the day of 18 ; BETWEEN [*tenant in tail*] of, &c. of the first part; [*tenant*] of, &c. of the second part; and [*demandant*] of, &c. of the third part (*a*); WITNESSETH, that for docking, barring, and destroying the estate tail of him the said [*tenant in tail*], and all other estates tail, and all remainders, limitations, reversions, estates, charges, conditions, and contingencies, thereupon respectively expectant or depending, of and in the messuages or tenements, lands, hereditaments, and premises hereby bargained and sold, or intended so to be (*b*) *And* in consideration of the sum of ten shillings, by the said [*tenant*], to the said [*tenant in tail*], paid at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged); HE the said [*tenant in tail*] *Hath* bargained, sold, and confirmed, *And* by these presents *Doth*

Testatum, whereby tenant in tail bargains and sells to tenant to the præcipe

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RECITALS. (*a*) If recitals are to be introduced, see the preceding forms.

PURCHASE. (*b*) If the recovery is suffered on a purchase, make the purchaser of the fourth part, and insert here,

"and for limiting and assuring the same to the use of the said [*purchaser*] in the manner hereinafter mentioned,"

bargain, sell, and confirm, unto the said [*tenant*], his heirs and assigns, ALL THAT, &c. (*parcels*), Together with, &c.; *And* the reversion, &c.; *And* all the estate, &c.; To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby bargained and sold, or intended so to be, with their and every of their appurtenances, unto the said [*tenant*] and his heirs, *To the use* of the said [*tenant*] and his heirs, *To the intent* that he the said [*tenant*] may, by virtue of these presents, become and be tenant of the freehold of all the said messuages or tenements, lands, hereditaments, and premises, hereby bargained and sold, or intended so to be, in order that one or more good and sufficient common recovery or recoveries may be suffered and executed, of all the said messuages or tenements, lands, hereditaments, and premises, hereby bargained and sold, or intended so to be, against the said [*tenant in tail*], at the next or some subsequent (*c*) session or assizes to be held in and for the said county palatine of Chester, for which end and purpose it is hereby agreed and declared between and by the parties to these presents, that the said [*demandant*] shall sue forth and prosecute out of the Court of Exchequer (*d*) in the same county palatine of Chester, one or more writ or writs, in the nature of a writ of entry, *sur disseisin en le post* returnable before his Majesty's Justices

WHERE THE LANDS ARE IN A COUNTY PALATINE, OR WALES.

parcels,

to the intent that a recovery may be suffered.

Mode in which recovery is to be suffered.

(*c*) If the recovery lands are in Wales, say, Wales.

"subsequent great session to be held in and for the several counties of Carmarthen, Pembroke, and Cardigan, the the county of the borough of Carmarthen, and the town and county of Haverford West," (*or as the case may be*).

Where the lands are in the county of Durham, say,

"subsequent session or assizes to be held in and for the county palatine of Durham;" Durham.

Where the lands are in the county of Lancaster, say,

"in and for the county palatine of Lancaster;" Lancaster.

(*d*) If the lands are in Wales, say,

"out of the Court of Chancery of the Great Sessions of the several counties of Carmarthen, &c. (*or as the case may be*), one or more writ or writs of *quod ei deforceat* in the nature of a writ or writs of entry *sur disseisin en le post*, Wales.

WHERE THE LANDS ARE IN A COUNTY PALATINE, OR WALES.

of session or assize, to be held in and for the said county palatine of Chester, and thereby demanded against the said [*tenant*] all and every the said messuages or tenements, lands, hereditaments, and premises, hereby bargained and sold, or intended so to be, by such names, quantities, qualities and descriptions, as shall be sufficient to comprize and ascertain the same, to which said writ the said [*tenant*] shall and will appear in his own proper person, and vouch to warranty the said [*tenant in tail*], who in his own proper person, or by his attorney or attornies in that behalf duly authorized, shall appear gratis and enter into the said warranty, and vouch to warrant the said hereditaments and premises, the common vouchee, who shall likewise appear gratis and plead, and after imparlance shall make default by departing in contempt of the court, so that judgment may be thereupon had, awarded, and given to the said [*demandant*], to recover the said messuages or tenements, lands, hereditaments, and premises, against the said [*tenant*], and for him to recover in value against the said [*tenant in tail*], and for him the said [*tenant in tail*] to recover in value against the said common vouchee; *And* that execution shall and may be thereupon had and taken, and all and every other act and thing done and perfected, needful and requisite for the having, suffering, and executing a good and effectual common recovery or recoveries, of all the said messuages or tenements, lands, hereditaments, and premises, hereby

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returnable before his Majesty's justice or justices of the said Great Sessions."

Durham. Where the lands are in the county of Durham, say,

"out of the Court of Chancery at Durham, one or more writ or writs of entry *sur disseisin en le post*, returnable before the justices of the Court of Pleas, at Durham."

Lancaster. Where the lands are in the county of Lancaster, say,

"out of the Court of Chancery for the county palatine of Lancaster, one or more writ or writs of entry, returnable before his Majesty's justices of assize for the same county palatine."

bargained and sold or intended so to be, with such voucher as aforesaid, according to the usual course, order, and manner of common recoveries, for assurance of lands in the said (*e*) county palatine used and accustomed. *And* it is hereby agreed and declared between and by the parties to these presents, that from and immediately after suffering and perfecting the said common recovery or recoveries so as aforesaid, or in any other manner to be suffered, and seisin shall be had, taken, and delivered accordingly, the said common recovery or recoveries, and all and every other common recovery or recoveries, fines, conveyveyances, and assurances in the law whatsoever, heretofore had, made, suffered, levied, or executed, or hereafter to be had, made, suffered, levied, or executed of the said messuages or tenements, lands, hereditaments, and premises, hereby bargained and sold, or intended so to be, with their appurtenances, or any of them, or any part thereof, *either* alone, or jointly with any other hereditaments, or whereunto they or any of them are or shall be parties or privies, so far as the parties to these presents can lawfully direct the use thereof, shall operate and enure, *To the use* of the [*tenant in tail*], his heirs and assigns for ever (*f*). IN WITNESS, &c.

WHERE THE LANDS ARE IN A COUNTY PALATINE, OR WALES.

Declaration that the recovery, when suffered, shall enure to the use of tenant in tail in fee.

(*e*) If the lands are in Wales, say, "said county of Cardigan," (*or as the case may be*). Wales.

(*f*) If the recovery is suffered on a purchase, say, "to the use of the said [*purchaser*], his heirs and assigns for ever." PURCHASE.

Or if the lands are limited to uses to bar dower, see *ante*, Vol. VI. 276; and introduce covenants for title, as follows,

"*And* the said [*tenant in tail*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that for and notwithstanding any act, deed, matter, or thing whatsover, by him the said [*tenant in tail*] made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, he the said [*tenant in tail*] now hath in himself good right, full power, and lawful and absolute authority, to grant, bar- Covenants for title.

WHERE THE LANDS ARE IN A COUNTY PALATINE, OR WALES.

gain, sell, and convey the said messuages or tenements, lands, hereditaments, and premises hereby bargained and sold, or intended so to be, with the appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And* that it shall and may be lawful for the said [*purchaser*], his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter into, hold, occupy, possess, and enjoy the said messuages or tenements, lands, hereditaments, and premises hereby bargained and sold, or intended so to be, with their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by him the said [*tenant in tail*] or his heirs, or of, from, or by any person or persons whomsoever, lawfully or equitably claiming or to claim, by, from, or under, or in trust for him, them, or any of them; *And* that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*tenant in tail*], his heirs, executors, and administrators, well and sufficiently saved and defended, kept harmless and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights or titles of or to dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rent, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all arrests, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered by the said [*tenant in tail*] or his heirs, or any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for him, them, or any

of them, or by his or their acts, means, defaults, or procurements: *And* further, that he the said [*tenant in tail*] and his heirs, and all and every other person and persons having and claiming, or who shall or may hereafter have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, lands, hereditaments, and premises hereby bargained and sold, or intended so to be, with their appurtenances, or any of them, or any part thereof, by, from, or under, or in trust for him the said [*tenant in tail*] or his heirs, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the said [*purchaser*], his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring the said messuages or tenements, hereditaments and premises hereby bargained and sold, or intended so to be, and every part thereof, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*purchaser*], his heirs and assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required; so as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make the same, and his or their heirs, executors, and administrators acts and deeds; and so as the party or parties who shall be required to make such further assurance or assurances be not compelled nor compellable, for the making thereof, to go or travel from his, her or their usual place or respective places of abode (*g*)."

WHERE THE LANDS ARE IN A COUNTY PALATINE, OR WALES.

and for further assurance.

(*g*) Recoveries of lands situate in the colonies, may here be

Recovery of lands in the colonies.

WHERE THE LANDS ARE IN A COUNTY PALATINE, OR WALES.

adverted to with propriety. Recoveries of lands in the colonies were at one time of frequent occurrence, and they will be valid even although it appear on the face of the recovery that the lands are situate in a colony. *Smale* dem. *Brembridge*, 1 Bing. 72. *Bayley* dem. *Brombridge*, 7 Moo. 372, S. C. *Robert Hinde* dem. *John Hinde*, ten. Bland. vouchee, 2 B. & B. 7.

In all the West India Islands, except the Bahamas and the Bermudas, no recovery is necessary of lands situated there. In these two colonies, recoveries are necessary for the purpose of barring the entail and the remainders thereon; but in all the other islands in which the English law is administered, it has been enacted, that a deed registered in the way prescribed in the several acts, shall have the same force as a recovery; and as this mode is much less expensive, and not attended with any doubt, it is now generally adopted in all the West India Islands.

It remains a matter of doubt, however, how far a recovery suffered in the Court of Common Pleas, or in any inferior court of this country, can affect lands situate in the West Indies.

It has been laid down, that no recovery suffered in this country, can bar an entail in lands situate in the colonies, unless the validity of the recovery for such purpose, has been established by the local laws of the colony. Chalm. Op. 174.

It is certain, that in most of the colonies such recoveries, and the jurisdiction of the English Courts therein, have been recognized; see Stokes, Colonies, 185; Howard on Purchases in the West Indies, 105; as by the several acts for substituting a registered deed in the place of a recovery, it has been declared that such a deed shall have the same effect as if a recovery *were suffered of the same lands at Westminster.*

The following conclusions may therefore perhaps be drawn: That a recovery of lands situate in a colony, will be permitted to be suffered in the Court of Common Pleas in this country: That such recovery would effectuate all the purposes of a recovery, and would be supported in the Colonial Courts: But that to avoid all doubt, in the two colonies in which recoveries still exist, it will be better to suffer the recovery in the Colonial Court, and in every other colony, to prepare a deed and register it according to the forms prescribed by the local act, and thus obtain all the benefit of a recovery.

The ceremonies required on such a deed, are given at length by Mr. Howard, 187 *et seq.* and need not be here repeated.

RELEASE *of Lands to Trustee to preserve Contingent Remainders, where it is doubtful whether the Releasor is* TENANT IN TAIL *or* TENANT FOR LIFE (*a*).

WHERE A PERSON IS TENANT IN TAIL, OR TENANT FOR LIFE.

THIS INDENTURE, made the day of BETWEEN [*supposed tenant in tail*] of, &c. of the one part, and [*trustee*] of, &c. of the other part: (*recite the will limiting the estate*;) AND WHEREAS doubts are entertained whether under the said will the said [*supposed tenant in tail*] is tenant in tail or tenant for life of the said messuages or tenements, lands, hereditaments, and premises hereafter described and intended to be hereby granted and released, with their appurtenances; AND WHEREAS the said [*supposed tenant in tail*] is desirous of suf-

Parties.

Recital that doubts are entertained as to the estate of tenant in tail.

Desire to suffer a recovery.

(*a*) It not unfrequently happens, that it is doubtful from the obscure wording of a will, whether a person is tenant in tail or tenant for life, with contingent remainders in favour of his children. The person interested under the limitation is desirous of barring the estate tail if any, and if he have only a life estate, of preserving the contingent remainders. In such a case, the safest course to pursue, is that recommended by Mr. Preston, 1 Conv. 113, and adopted in the above form. The supposed tenant in tail should convey the lands to a trustee for the life of the supposed tenant in tail, to the use of the supposed tenant in tail during the joint lives of himself and the intended tenant to the writ of entry, with remainders to the use of the said trustee for the life of the supposed tenant in tail, in trust for him and his assigns. The supposed tenant in tail should afterwards, by a separate deed, convey the lands to the tenant to the præcipe, for the purpose of suffering the recovery. The freehold will thus be conveyed to the tenant to the præcipe, and the estate limited to the trustee in trust for the supposed tenant in tail, will protect the contingent remainders from being destroyed;

Where it is doubtful whether a person is tenant for life or tenant in tail.

WHERE A PERSON IS TENANT IN TAIL, OR TENANT FOR LIFE.

fering a common recovery of the said messuages or tenements, lands, hereditaments, and premises, hereinafter described and mentioned, to be hereby granted and released, with their appurtenances, and of barring his said estate tail (if any) therein; AND WHEREAS it has been deemed expedient that before suffering the said common recovery the said messuages or tenements, hereditaments and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, should be conveyed to the said [*trustee*] in the manner hereafter mentioned;

Testatum, whereby, in consideration of ten shillings;

tenant in tail conveys

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland by the said [*trustee*] to the said [*tenant in tail*] paid, at or immediately before the sealing and delivering of these presents (the receipt whereof is hereby acknowledged), *He* the said [*tenant in tail*] *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, and confirm unto the said [*trustee*] (in his actual, &c. (*reference to lease for a year*), and his heirs ALL THAT, &c. [*parcels*] *Together* with, &c. *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*trustee*] and his heirs, for and during the natural life of the said [*tenant in tail*], TO THE USE of the said [*tenant in tail*] and his assigns, during the joint natural lives of the said [*trustee*] and [*tenant in tail*]; *And* from and after the determination of that estate by forfeiture, surrender, or otherwise, *Then* to the use of the said [*trustee*] and his heirs, for the natural life of the said [*tenant in tail*], *In trust* for the said [*tenant in tail*] and his assigns. IN WITNESS, &c.

parcels.

Habendum to the trustee and his heirs, for the life of tenant in tail.

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and no doubt as to the title need appear on the face of the recovery deed. It has been thought necessary to insert a form for the first deed only, as the second deed will be precisely in the form given *ante*, p. 91. Where the estate is copyhold or equitable, as the contingent remainders will not be destroyed by the surrender or merger of the preceding estate for life, this precaution need not be adopted

HABENDUM IN RECOVERY DEED OF LAND IN SEVERAL COUNTIES.

HABENDUM *in a Recovery Deed, where the Parcels conveyed were situated in four different Counties; and it was agreed that four several Recoveries should be suffered of them.* (A neat and special form.)

TO HAVE AND TO HOLD the said manors or lordships, messuages or tenements, lands, hereditaments, and all and singular other the premises hereby released, or intended so to be, unto the said [A.] and his heirs, *To the use* of him the said [A.], and his heirs; *To the end and intent* hereinafter expressed (that is to say), *It is hereby agreed and declared*, between and by the parties to these presents, that four, and if necessary or expedient more, common recoveries shall, at the equal expence of the said [B.] and [C.], their respective executors or administrators, be forthwith suffered of the same manors or lordships, messuages or tenements, lands, hereditaments, and premises, before his Majesty's Justices of the Court of Common Pleas at Westminster; *And* that one of the said common recoveries shall comprise such of the said hereditaments as are situate in the county of [N.]; another, such of the said hereditaments as are situate in the said county of [E.]; another, such of the said hereditaments as are situate in the said county of [D.]; and the other, such of the said hereditaments as are situate in the county of [L.]; *And* that in each of the said common recoveries the said [E.] shall be demandant, the said [A.] tenant, and the said [B.] and [C.] vouchees, who shall vouch over the common vouchee of the said Court of Common Pleas; *And* that the said common recoveries, after the same shall be perfected, and all and every other common recoveries, fines, conveyances, and other assurances in the law whatever of the said manors or lordships, messuages or tenements, lands, hereditaments, and premises, and their appurtenances, or any of them, or any part thereof (to which the said [B.] and [C.], or either of them, shall be parties or party, or privies or privy) shall severally operate and enure, *To the uses*, &c.

RECITAL OF A RECOVERY OF COPYHOLD PREMISES.

Recital *of a Recovery of Copyhold Premises.*

Whereas for the purpose of extinguishing all estates tail, and equitable interests in the nature of an estate tail, which the said [A.] had in the copyhold or customary piece or parcel of land and hereditaments, hereinafter described and covenanted to be surrendered, and their appurtenances, and barring all remainders, reversions, and other estates expectant or depending thereupon, the said [A.] did, at a Court Baron held in and for the manor of , on or about the day of now last past, duly surrender the said copyhold or customary piece or parcel of land and hereditaments, and their appurtenances, into the hands of the lord of the said manor, *To the use* of [B.] and his heirs; *And* immediately thereafter a recovery was duly suffered in the said Court of the same piece or parcel of land and hereditaments, and their appurtenances; in which recovery the said [C.] was demandant, the said [B.], tenant, and the said [A.], vouchee, who vouched over according to the usual and customary mode of suffering recoveries, for barring entails in copyhold or customary lands and hereditaments held of the said manor; *And* after the suffering of such recovery the same piece or parcel of land and hereditaments, and their appurtenances, were duly surrendered by the said [C.] into the hands of the lord of the said manor; *To the use* of the said [A.], his heirs and assigns, To hold to him, his heirs and assigns, at the will of the lord, according to the custom of the said manor, by the rents and services therefore due and of right accustomed; *And* the said [A.] was thereupon duly admitted tenant thereto (*a*).

(*a*) For recitals of recovery deeds, and recoveries suffered in pursuance thereof, of freehold premises, see Index, Recital.

RELEASES.

A RELEASE may be defined to be a "conveyance or discharge of a person's right, in real or personal property, to another person who is in possession of such property."(*a*) It is essential to a release, that the party to whom it is made, (who is usually called the *releasee*,) should be in possession;—or, as to personal property, have an interest similar or equivalent to possession: thus, if a man be disseised, or has conveyed his land to a trustee, or has leased it to a tenant, and afterwards agrees with the disseisor, trustee, or tenant, to sell or transfer to him all his interest in the land, the proper mode for effecting such an agreement, is by a simple deed of release; and if one man be indebted to another in a sum of money, and the creditor consents to discharge the debtor without payment, or full payment, the instrument necessary for that purpose is called a release. Definition.

At the common law, the actual possession in lands could only be effectually conveyed to a stranger by feoffment, with livery of seisin;—for, prior to the statute 28 Hen. VIII, c. 15, the possession of a mere tenant for years was but little regarded, and might at any time be defeated;—and the right to the possession of lands after the determination of the estate acquired by a particular tenant, could only be transferred to a stranger by a deed of grant, to be perfected by the *attornment* of the tenant (*b*); but when, as it often happened, the tenant of the land arranged with the owner of it for a further grant, the continued possession of the tenant rendered both livery of seisin, and attornment, unnecessary; and, in support of the further grant, it was only requisite to have a deed between the parties, shewing the duration of the estate conferred by such grant, and the consent of the tenant to accept it. Modes of assurance at common law.

Name of the assurance called a release, accounted for:

A feoffment conveying only a freehold interest, and not passing the inheritance, has, as well as a demise for years, been long called a *lease*; and it has been supposed (*c*) that a further grant to a particular tenant, acquired the name of a Re-lease from the circumstance of its being a repetition of the act under which the tenant first came into possession; and also to distinguish it from the conveyance of a reversion or remainder to a stranger,—which was always called a *Grant*. As the difference between it and a *grant*.

(*a*) Shep. Touch. 320. Bl. Com. 324. Lit. § 444.

(*b*) Co. Litt. 271, (*b*). Butl. *n*. 1.

(*c*) 2 Prest. Conv. 211.

general operations of the assurance called a release, is the relinquishment or discharge of a right, there seems but little scope for speculation as to the origin of its *name*.

Different kinds of releases.

Releases, in reference to their operation, and as regards real estate, are usually said to be of five kinds (*d*): first, those which operate *by way of passing an estate*; as where one, of two, or more coparceners or joint tenants, releases his or her share to the others or other of them: secondly, those which operate *by way of passing a right*; as in the case of a disseisee releasing his right to a disseisor: thirdly, those which operate *by way of enlargement*; as when a reversioner or remainder man in fee, releases to the particular tenant in possession: fourthly, those which operate *by way of extinguishment*; as when a lord of a manor enfranchises his copyholder by releasing his seignorial rights, or the grantee of a rent-charge, or the owner of a right of common, releases the terre tenant therefrom: and fifthly, those which operate *by way of entry and feoffment*; as if there be two disseisors, and the disseisee releases to one of them: in which case the release will have the same effect as if the disseisee had entered, and thereby put an end to the disseisin, and afterwards enfeoffed the disseisor named in the release, in fee. Such disseisor will, after the release, be deemed to be solely seised, and may keep out his former companion.

Differences between releases of *estates*, and releases of *rights*.

There are two important distinctions between releases of *estates*, and releases of *rights*, which it is proper to notice here. The first is, that to the release of an *estate*, there must be a privity between the releasing parties; while in a release of *right*, there need not be, and generally is not, any such privity: and the second is, that the release of an *estate* will admit of qualification, according to the intentions of the releasor; but that a release of *right* will be absolute, and cannot be limited to a particular period, or be made subject to a condition (*e*).

Operative words in a release.

The principal word in a RELEASE, or the operative word, as it is called, is "*Release*;" but to this are generally added in practice, some other words: as "*remise*," "*release, and*" "*for ever quit claim*," or "*acquit, release, exonerate, and for ever discharge*;" but any words expressive of an intention to release, or to do that which amounts to a release, will operate as a release (*f*). Thus if a lessor grants, that his lessee shall be discharged of his rent (*g*); or, a man covenants with a debtor that he will never sue him for a debt (*h*); or acknowledges that he is satisfied of all bonds by the obligor (*i*); or, being a joint tenant or coparcener, grants, bargains, and sells his share in the lands

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(*d*) 2. Bl. Com. 325. *Com. Dig.* tit. Release.
(*e*) Co. Litt. 266 a, 274 a, 275 a, 280 a.
(*f*) Litt. § 445. (*g*) Co. Litt. 264 b.
(*h*) Lord Raym. 610. Cro. Eliz. 352. (*i*) 9 Co. 52 b.

to his companion (*k*):—each of these acts are held to amount, in law, to a release.

There are some few acts (*l*) also, which, by mere construction of law, operate as a release, as if a woman marries her debtor (*m*), or a man makes his debtor his executor (*n*). But in reference to the former case, it is to be observed, that the debt must be one which existed at the time of the marriage, or would arise during the marriage, and not one which can only arise *after* the marriage; as if a man before marriage promises to leave his wife, if she survives him, a given sum of money, this obligation will not be discharged by the marriage (*o*); and, in the latter case, it is to be remembered, that, as the legal impossibility of the executor maintaining an action against himself, is the ground of such constructive release, by the testator, the release will only be considered as of the nature of a specific legacy or bequest to the amount of the debt; and, consequently, that the executor cannot retain his debt till the creditors of the testator are paid (*p*). Releases by construction of law.

Releases by coparceners and joint tenants to their companions, are the only instances usually given of releases of the first kind; namely, those which operate by way of *passing an estate*; and in reference to these, it is necessary to observe, that they will pass a fee without words of inheritance, the inheritance being already in the releasee, or releasees under the original descent or grant; although, under a release which operates by way of *enlargement* of an estate, the releasee will only take an estate for his life, unless it be expressly made to him and his heirs (*q*). Releases passing an estate.

Under the second kind of releases, or those which operate by way of passing a *Right*, may be included, not only releases of rights of entry and of action, but also releases of possibilities and contingent interests not being estates, and releases of rights of redemption, and other equitable interests. Releases passing a right.

A right or title to land, may be released in several ways (*r*): first, to the tenant of the freehold in fact or in law; as if a disseisee or his Different ways in which such

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(*k* 1 Vent. 78. 2 Saund. 97.

(*l*) In a late case, a father on his death bed caused a promissory note which he had received from his son, for a sum of money advanced to him on commencing business, to be burnt, and afterwards died intestate; this was held to amount in equity to a release. *Gilbert* v. *Wetherell*, 2 Sim. & Stu. 254.

(*m*) Co. Litt. 264, (b). (*n*) Ibid.

(*o*) *Smith* v. *Stafford*, Hob. 216. *Gage* v. *Acton*, 1 Salk. 325. 12 Mod. 290; see 2 P. Wm. 243.

(*p*) Co. Litt. 264, b. note 1. (*q*) Co. Litt. 273, b.

(*r*) Co. Litt. 265, a 1.

Releases may be made.

heir releases to the disseisor, or his heir, either before or after entry: secondly, to the reversioner or remainder-man; as if a disseisor makes a lease for life, and afterwards the disseisee releases to the disseisor, who retains the reversion of the estate acquired by the disseisin; or, if the disseisor conveys to one for life, with remainder to another in fee, and the disseisee, or his heir, releases to the remainder-person: thirdly, to a person who has right only in respect of privity (*s*); as if the tenant be disseised, the lord may nevertheless release the rent and services to him: and fourthly, to a person who has privity merely, and not any right; as if a tenant in tail, makes a feoffment in fee, and thereby parts with all his right, yet in respect of the privity only, the donor may release the rent and services. But a release by a person having a right in land, to a party who has neither a freehold estate nor an estate in remainder or reversion, and between whom and the releasor there is no privity, will be void; as if a disseisee release his right to a lessee for years of the disseisor (*t*).

To what a release of all right in land will extend.

If a person releases all his right in land, this will extend to all his present right, whether in possession or reversion, and also to a power of revocation, or any other power not simply collateral; but it will not extend to a right which may afterwards be acquired by a new title, or to a bare authority, or power simply collateral (*u*): thus, if a father be disseised, and the son, in the father's life time, releases all his right to the disseisor, this release will not affect the right of the son to enter for the disseisin, on his father's death; or if an authority to sell land be given to an executor, and the executor afterwards releases his right to the heir, or makes a feoffment to a stranger, independently of, or without exercising the power, the authority to sell will still remain.

So also, if an annuity be granted upon a condition precedent, a release by the grantee, before the period for performing the condition is arrived, will be void (*v*).

What charges a release of right will, and will not, defeat.

A release of right will not defeat a title which the releasee has granted or accepted; as if a disseisor grants a rent charge, and the disseisee subsequently releases the disseisor, such release will confirm, and not avoid the rent charge; or if the disseisor makes a feoffment on condition, and the disseisee then releases to the feoffee, the estate of

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(*s*) There are four kinds of *privity*; 1. In estate,—as between a donor and donee, or lessor and lessee. 2. In blood,—as between an ancestor and heir. 3. In representation,—as between a testator and his executor; and 4. In tenure,—as between landlord and tenant. Co. Litt. 271, a.

(*t*) Co. Litt. 266, a.

(*u*) Com. Dig. tit. Release (B. 3). Co. Lit. 265, b. *Albany's case*, 1 Rep. 110, b. see Jacob, 607.

(*v*) 1 Rep. 111, b.

the feoffee will still remain subject to the condition;(*w*) but a release will defeat *mesne* charges not made by the releasee himself; as if B. disseises A., and C. disseises B., and A. afterwards releases C., B. cannot enter upon C., because he has the release of A.; and so it is if there be twenty disseised, one after another, and the first disseisee releases the last disseisor (*x*), for this release will bar all the others of their actions and titles.

Release by way of enlargement, the origin of the assurance by lease and release.

The next and most general kind of release, is the release which operates *by way of enlargement.* It is the origin and principal part of the modern assurance of *lease and release;* and it would be improper in this place not to mention some points connected with it, although the operation of the release has been partly stated in former notes in this work; and although the insertion of a Form of such release amongst the precedents under this title, has been purposely omitted, from its necessarily very frequent occurrence under other titles.

What is essential to such release.

It has been before observed, that a release can only be made to a person who is in possession of the lands, or has a vested estate in them (*y*); and, therefore, if a conveyance be intended to be made to a stranger, without the formalities of livery of seisin, it is usual—preparatory to the release—to put the stranger into possession, or give him a vested estate in the land for a year, or other definite period, by a bargain and sale under the statute of uses, or by a demise at common law, to be perfected by entry. It is essential to the operation of this release, that there should be privity of estate between the releasor and releasee; that the releasee should have an estate which is capable of being enlarged; and, if it be intended that the releasee should take more than a life estate, that the release should contain technical words of limitation.

Expediency of having a lease for a year to support a release, intended to operate by way of enlargement.

If a person makes a lease, the lessee is capable of taking a release from his lessor, because there is a privity between them; but if the lessee makes an under-lease for years, and the original lessor releases to the under-lessee, such release will not enlarge the under-lessee's estate, because there is no privity between them (*z*); and therefore, though it might operate as a *grant* of the reversion expectant on the determination of the term of the first lessee, it will be void as a *release.* As a security against the release being rendered inoperative by the existence of an intermediate estate between the estate of the releasee, and the estate of the releasor, and also as evidence that the releasee had an estate capable of enlargement, it is almost always advisable to have a lease for a year, as a foundation for the release.

(*w*) Litt. § 476, 473.
(*x*) Litt. § 473.
(*y*) Co. Litt. 271, b. Batl. n. 1.
(*z*) Co. Litt. 373, a.

Who are capable of taking a release by way of enlargement.

A lessee for life (*a*), for years (*b*), or at will (*c*), or a tenant by statute merchant, statute staple, or eligit (*d*), is capable of taking a release to enure by way of enlargement; but a release to a tenant at sufferance (*e*), or a person having only an *interesse termini* (*f*), is void: in the former case, for want of privity; and in the latter, because the lessee, till entry, has neither possession nor a vested estate.

Necessity of words of limitation.

A release by way of enlargement will not, without words of limitation, confer on the releasee a greater estate than an estate for his own life (*g*); but with words of limitation, a person entitled in remainder, or reversion in fee, expectant upon a particular estate, may by release, convey his whole interest, and settle it in any manner he may think fit.

Release by way of extinguishment.

A release *by way of extinguishment*, is when the party to whom the release is made cannot take, or rather hold, the right released (*h*); as if the lord of a manor releases to his copyholder, or tenant, all his right in the seignory, or in the land, the seignory is extinct (*i*), for the tenant cannot take the services of himself; so also if the grantee of a rent charge releases the terre-tenant, or owner of the land, from it, the rent is extinct, for the like reason (*k*). In the same way, if a lessee for years, with reversion in fee in his lessor, be disseised, and the lessee releases his right to the disseisor, the right under such release will become extinct (*l*), and the disseisee in reversion may enter immediately.

Release by way of entry and feoffment.

The release by way of *entry* and *feoffment*, does not require any particular notice here, as its nature has been before explained (*m*). It is not mentioned either by Mr. Cruise in his Digest, or by Mr. Butler in his Notes on the chapter Releases, in Lord *Coke's* Commentary on Littleton, as forming a separate and distinct kind of release.

Copyholds.

A release is the proper mode of assurance for conveying the share of one joint-tenant or coparcener to his or her companion, as well in copyhold lands as in freehold lands (*n*); and also for conveying equitable rights and interests in copyhold lands (*o*); except in the case of a married woman, where it would seem that a surrender in the lord's court is necessary (*p*).

Release of actions and suits.

A release of *actions* extends to all actions, real, personal, or mixed, and to all causes of action (*q*); but it will not release a right

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(*a*) Co. Litt. 270, 6.
(*b*) *Ibid.*
(*c*) Litt. 460.
(*d*) *Ibid.*
(*e*) Co. Litt. 273, a.
(*f*) Litt. § 459.
(*g*) *Ibid.* 465.
(*h*) Com. Dig. tit. Release, B. 6.
(*i*) Co. Litt. 279, b.
(*k*) Litt. 480.
(*l*) Co. Lit. 276, a.
(*m*) *Ante*, p. 146.
(*n*) *Ante*, Vol. 6, p. 18 & 73.
(*o*) Watk. Cop. p. 120.
(*p*) 3 Prest. Abstr. p. 31.
(*q*) Com. Dig. tit. Release, E. 3.

of entry(*r*). A release of all *suits, quarrels, controversies,* or *disputes,* will also discharge all actions and causes of action (*s*).

A release of all *covenants,* is a good discharge of a covenant as well before as after it is broken (*t*). Release of covenants.

A release of all *demands* is the most ample that a person can make. It will discharge all sorts of actions, rights, and titles, conditions, before and after breach, executions, appeals, rents of all kinds, covenants, contracts, bonds, recognizances, statutes, and all other present claims whatsoever (*u*); but it is said that it will not extend to rent, incident to reversion, which is not yet due; nor to a debt, which by the contract is made payable at a future period (*v*). Release of claims and demands.

In regard to the construction of releases, it is a rule, that where there are only general words in a release, they shall be taken most strongly against the releasor; as where a release is made to A. and B. of all actions, it will extend to all several actions which the releasor has against them, as well as to all joint actions; and if an executor releases all actions, it will extend as well to those which he has in his own right, as to those which he has in right of his testator; but that where a release contains particular recitals, shewing distinctly the purpose of the instrument, the general words in the operative part of the release, shall be controuled or qualified by the special words (*w*). And it seems that if the release be given upon a particular occasion, the operation of general words of release will be restrained to that occasion; as if an executor, upon payment to him of a legacy by the executor of another party, releases all demands against him, as such executor, for any matter whatsoever; this will not be held to extend to a debt due to his testator from the executor of such other party(*x*). Rule of construction.

A release may be pleaded in bar to an action at law (*y*); but if the release has been fraudulently obtained, the fraud may be the subject of a replication; the special circumstances under which the release was given being therein set forth (*z*). And in a gross and manifest case of fraud, the court will even order the plea to be set aside, without compelling the plaintiff to reply that the release was obtained by fraud (*a*). A release may be pleaded at law;

(*r*) Co. Litt. 286, a. (*s*) *Ibid.* (*t*) *Ibid.* 292, b.

(*u*) *Ibid.* 291, b. (*v*) Com. Dig. tit. Release (E 1).

(*w*) 1 Lord Raym. 235, 2 Roll's Abr. 409 (A. 1). *Lord Arlington* v. *Merrick,* 2 Saund. 414. 1 Fonbl. Trea. Eq. 441. *Payler* v. *Homersham,* 4 M. & S. 243.

(*x*) Com. Dig. tit. Release, (Q 1.) and see 1 Ves. 507. 2. Ves. 310.

(*y*) 2 Roll. Abr. 410, l. 47. 7 Mod. 256.

(*z*) *Craib* v. *D'Aeth,* 7 T. R. 670, n. (b). 1 Selw. Ni. Pri. 574, 6th edit.

(*a*) *Manning* v. *Cox,* 7 Moore, 617. *Innell* v. *Newman,* 4 B. & A. 419.

and in equity.

A release may be pleaded to a bill for discovery and account (*b*), or even to a bill to set aside the release (*c*); but if fraud, surprise, or any other equitable objection to the release be charged, the plea must contain averments negativing those circumstances, and be also supported by an answer fully denying them (*d*).

A release will sometimes be presumed.

A release will sometimes be *presumed;* as courts both of law and equity always discountenance stale and long-dormant claims, and conceiving that undue delay in asserting rights, or urging demands, is of itself evidence against their existence, will, in support of the extinction or satisfaction of old demands, presume the necessary instruments of conveyance, or proper deeds of discharge (*e*).

May be relieved against in equity.

If a release be obtained by fraud, or improper concealment of facts, by a person whose duty it was to make the disclosure, equity will relieve against it (*f*); and in some cases ignorance by a party of his rights will alone be ground for setting a release aside (*g*); but if a release be solemnly and deliberately given, it will not be set aside without very clear proof of imposition (*h*); and where a release pleaded by an administrator, stated that he had received all the property, the court would not assume that he had received any after the releasee (*i*).

Cautions in preparing releases.

In preparing releases, care should be taken that the release does not by construction of law, have a greater effect than is intended: as if there are two or more obligors, and it is intended only to discharge one of them, it will be improper to *release* such one, since the release of one obligor may be pleaded in bar by the other or others; but in such case, a covenant not to sue should be given to the party intended to be discharged; which covenant, in that case, will not operate as a release (*k*).

So also in releasing lands from a rent charge, it is to be remembered that a rent-charge is entire (*l*), and that by releasing part of the land from it the whole rent may become extinct (*m*). The same observation likewise applies to a *chose en action,* which is entire (*n*).

Care should also be taken that no technical difficulty exists, which will prevent effect being given to an intended release; thus an intended release of a judgment, will not have effect by a release of all a man's right and interest in the land (*o*); for until the execution of the elegit, a judgment does not confer any right in or to the land (*p*).

(*b*) *Astley* v. *Fountaine,* Finch 4; and see Jacob, 116.

(*c*) *Pusey* v. *Desbouvrie,* 3. P. Wms. 315, 317.

(*d*) *Bayley* v. *Adams,* 6 Ves. 594. *Lingwood* v. *Croucher,* 2 Atk. 395, 581.

(*e*) *Pickering* v. *Lord Stamford,* 2 V. J. 583. Math. on Presump. p. 8.

(*f*) *Gray* v. *Bull,* 1 Vern. 86. *Anonymous,* Skin. 148.

(*g*) *Bowles* v. *Stewart,* 1 S. & L. 209. *Broderick* v. *Broderick,* 1 P. W. 239.

(*h*) 3 Swanst, 444, *note.*

(*i*) 6 Madd. 166.

(*k*) Selw. Ni. Pri. 574—576, 6th edit.

(*l*) Co. Lit. 147, b.

(*m*) 2 Roll. 414. Gilb. Rents, 152.

(*n*) 18 Vin. Abr. 356.

(*o*) *Barrow* v. *Gray,* Cro. Eliz. 551.

(*p*) Co. Litt. 265, b.

RELEASE *of an* ANNUITY *secured by the Covenant of the Grantor, and an Assignment of a Life-Interest in a Sum of Three Pounds per Cent. reduced Bank Annuities; and* RE-ASSIGNMENT *of the Life-Interest in the Bank Annuities* (by Deed Poll). OF ANNUITY.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*grantee of the annuity*] of, &c. SENDS GREETING. WHEREAS by an indenture of settlement bearing date on or about the day of , and made between [*grantor of the annuity*] of, &c. of the first part; [A. B.] of, &c. spinster, of the second part; and [X. Y.] and [Y. Z.], therein respectively described, of the third part; a sum of pounds, three pounds per cent. reduced bank annuities, then standing in the names of the said [X. Y.] and [Y. Z.], in the books of the governor and company of the Bank of England, as in the said indenture is mentioned, was (in consideration of a marriage then intended, and shortly afterwards solemnized between the said [*grantor of the annuity*] and [A. B.], and for other the considerations therein expressed), settled *Upon the trusts*, and subject to the powers and provisoes in the same indenture declared and contained concerning the same, and hereinafter in part mentioned, (that is to say), *In trust* for the said [A. B.], her executors, administrators, and assigns, until the said then intended marriage should be solemnized, and from and immediately after the solemnization thereof, *Upon trust* that they the said [X. Y.] and [Y. Z.], or the survivor of them, or the executors, administrators, or assigns of such survivor, should pay the dividends and annual produce of the said sum of pounds, three pounds per cent. reduced bank annuities to, or permit and authorise the same to be received by the said [*grantor*], or his assigns, during his life, and after his decease, to or by the said [A.B.], for her separate use, in such manner as in the said indenture is men-

Recital of the settlement under which the grantor became tenant for life of the stock;—

OF ANNUITY.

and of the annuity deed;

tioned: AND WHEREAS (*a*) by an indenture bearing date the day of , and made between the said [*grantor*] of the one part, and the said [*grantee*] of the other part; the said [*grantor*] did, (in consideration of the sum of pounds, to him paid by the said [*grantee*], as therein is mentioned), covenant with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*]

Short recital of an annuity-deed.

(*a*) The following short recital of the grant of an annuity may sometimes be useful:

"AND WHEREAS by an indenture bearing date, &c. and made, &c. the said messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby assigned, and their appurtenances, were (in consideration, &c.) charged by the said , with the payment to the said , his executors, administrators, or assigns, during the term of years, if [A.] [B.] and [C.], therein respectively described, or any of them, should so long live, of an annuity, or clear yearly rent or sum of pounds, to be paid and payable by two equal half-yearly portions, on the day of , and the day of in every year, and also of a proportionate part of the same annuity, or yearly rent or sum, up to the day of the decease of the survivor of them the said [A.], [B.], and [C.], in case such survivor should die during the said term on any other than one of the half-yearly days of payment, thereinbefore mentioned, together with the usual powers and remedies for recovering the same, when in arrear; *And* by the said indenture, the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances, were demised by the said , unto the said , his executors, administrators, and assigns, for a term of years, from thence next ensuing, *Upon the trusts* therein declared for raising and paying the said annuity, or yearly rent or sum, as the same should become due; *And* by the said indenture, the said annuity or yearly rent or sum of pounds thereby secured, was made repurchasable upon the terms, and in manner therein mentioned and expressed."

would pay to the said [*grantee*], his executors, administrators, and assigns, a clear annuity, or yearly sum of pounds, of lawful money of Great Britain, during the life of him the said [*grantor*], by four equal quarterly payments, on the days in the same indenture mentioned; *And* that if the said [*grantor*] should happen to die on any other than one of the quarterly days of payment thereinbefore mentioned, the heirs, executors, or administrators of him the said [*grantor*] should immediately after his decease pay to the said [*grantee*], his executors, administrators, or assigns, a proportionate part of the said annuity or yearly sum for the time which the said [*grantor*] should have lived of the then current quarter of a year; *And* by the said indenture now in recital, the said [*grantor*] did assign unto the said [*grantee*], his executors, administrators, and assigns, ALL the dividends, and annual produce, which during the life of the said [*grantor*] should arise and accrue from or in respect of the said therein and hereinbefore mentioned sum of pounds, three pounds per cent. reduced bank annuities, *To hold* the same unto the said [*grantee*], his executors, administrators, and assigns, *Upon the trusts* in the said indenture declared concerning the same, for securing the regular payment of the said annuity, or yearly sum of pounds thereby covenanted to be paid as aforesaid, and such proportionate part thereof as hereinbefore is mentioned, in case the same should become payable; *And* by the said indenture now in recital, the said [*grantor*] did covenant with the said [*grantee*], his executors, administrators, and assigns, that in case he the said [*grantor*] should at any time, during the continuance of the said annuity or yearly sum of pounds, thereby covenanted to be paid as aforesaid, leave Great Britain, and the said [*grantee*], his executors, administrators, or assigns, should thereby be put to any extra expense in effecting an insurance on the life of the said [*grantor*], or in keeping on foot any insurance which should or might have been previously effected on his life, as therein is mentioned, it should be lawful for the said [*grantee*] his executors, administrators, or assigns, to retain out of the dividends and annual produce thereinbefore assigned to

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him and them as aforesaid, all such sums of money, additional premiums, costs, and expenses, as he or they should so pay or incur by reason, or on account of the said [*grantor*] leaving Great Britain as aforesaid; *And* by the said indenture now in recital, the said [*grantee*] did covenant with the said [*grantor*] and his assigns, that it should be lawful for him the said [*grantor*], or his assigns, at any time thereafter, to repurchase(*b*) the said annuity, or yearly sum thereby covenanted to be paid as aforesaid, on giving to the said [*grantee*], his executors, administrators, or assigns, or leaving at his or their usual or last known place or places of abode in Great Britain, one calendar month's previous notice in writing of his or their intention so to do, and on paying to him or them for such repurchase the sum of pounds, together with all arrears of the said annuity or yearly sum up to and inclusive of the day of such repurchase, and all sums of money costs, and expenses, (if any), which should have been paid, by reason of the nonpayment of the same annuity or yearly sum, or any part thereof, or on account of any such additional premiums and expenses of insurance, as therein and hereinbefore mentioned; AND WHEREAS the said [*grantor*] did on the day of now last past, give unto the said [*grantee*] notice in writing of his the said [*grantor's*] intention to repurchase or redeem the said annuity, or yearly sum of pounds, secured by the said lastly recited indenture, as hereinbefore is mentioned, pursuant to the covenant or agreement for that purpose in the same indenture contained as aforesaid; AND WHEREAS no costs or expenses have been incurred by the said [*grantee*], by reason of the nonpayment of the said annuity, or yearly sum of pounds, at the times and

That notice to repurchase has been given.

That no costs have been incurred.

Stamp.

(*b*) By the 31st section in the Stamp Act, 55 Geo. III., c. 184, it is provided, that the releases and other conveyances of annuities, or rent charges, made in the original grant thereof, subject to be redeemed or re-purchased, shall, on the re-purchase thereof, be exempted from the *ad valorem* duty thereby imposed on conveyances on the sale of any property, and shall be charged only with the ordinary duty on deeds or instruments of the like kind not upon a sale. This duty is only one pound fifteen shillings for the first skin, with a progressive duty of one pound five shillings for the second, and each subsequent skin.

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in the manner in the said lastly hereinbefore recited indenture in that behalf mentioned, nor have any additional premiums for insurance, costs, or expenses, been incurred by the said [*grantee*], by reason of the said [*grantor*] having left Great Britain, as he the said [*grantee*] doth hereby testify and declare; AND WHEREAS the said [*grantor*] hath this day paid to the said [*grantee*] the sum of pounds, for the repurchase of the said annuity, or yearly sum of pounds, secured by the said lastly hereinbefore recited indenture as aforesaid, and the further sum of pounds, for a proportionate part of the same annuity or yearly sum, from the last quarterly day of payment of the same, up to and inclusive of the day of the date of these presents, as he the said [*grantee*] doth hereby admit and declare (*c*); AND WHEREAS the said [*grantee*] hath agreed,

that the repurchase-money, and all arrears of the annuity, have been paid.

and the agreement to release

(*c*) Sometimes on the re-purchase of an annuity, which is charged on land, the annuity, instead of being released, is assigned to a trustee to attend some mortgage or other incumbrance created on the occasion, or for the purpose of making the re-purchase: in which case the following recitals and testatum clauses may be used. Such transactions have been more frequent of late years, on account of the reduction in the rate of interest at which money may be obtained.

Assignment of an annuity to attend a mortgage.

"(*Recite the grant of the annuity, and the notice of intention to repurchase it, as in the next precedent; that for the purpose of repurchasing the annuity, and to answer other occasions, the grantor has borrowed of* [*A. B.*], *a sum of pounds, and that by indentures of lease and release, bearing even date, &c. the lands and hereditaments after mentioned, and so charged with the annuity, have been conveyed by grantor to* [*A. B.*] *in fee, subject to redemption, on repayment of the money borrowed, &c.*) AND WHEREAS upon the treaty for the loan of the said sum of pounds, secured by the said lastly hereinbefore recited indentures as aforesaid, it was agreed that out of the same sum, the sum of pounds, or such other sum as might be necessary, should be applied in repurchasing the said annuity or yearly rent or sum of pounds, so granted to the said , by the said recited indenture of the day of , as hereinbefore is mentioned; *And* that the said annuity or yearly rent or sum when so repurchased, should be assigned to the said

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at the request of the said [*grantor*], to make and execute the release and assignment, hereinafter respectively contained.

First witnessing part.

NOW KNOW YE, AND THESE PRESENTS WITNESS, that in pursuance and part performance of the said agreement, and in consideration of the premises, HE, the said [*grantor*] *Hath* acquitted, released, and for ever discharged, *And* by these presents *Doth* acquit, release, and for ever discharge the said [*grantor*], his heirs, executors, and administrators, and his and their estates and effects, whatsoever and wheresoever, and particularly the said dividends and annual produce, which shall hereafter during the life of the said [*grantor*] arise or grow due, from, or in respect of the said

The grantee of the annuity releases it.

[X. Y.], *In trust* as hereinafter is mentioned; *And* that the said hereditaments and premises comprised in the said term of years as aforesaid, should be assigned to the said [Y. Z.], in manner hereinafter expressed; (*then recite that in part performance of said agreement, the grantor has out of the mortgage money paid the repurchase money for the annuity, nearly as above*). Now THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, *And* in consideration of the premises, *And* of the sum of ten shillings, &c. HE the said [*grantee*], at the request, and by the direction of the said [*grantor*], and upon the nomination of the said [*mortgagee*] (testified, &c.) *Hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *Doth*, &c. unto the said [X. Y.], his executors, administrators, and assigns, ALL THAT the said annuity or yearly rent, or sum of pounds, so granted and secured to the said [*grantee*], his executors, administrators, and assigns, in and by the said hereinbefore recited indenture of the day of as aforesaid, *And* all future payments thereof; *And* all and every the powers and authorities which in and by the same indenture were given and granted for recovering the said annuity or yearly rent or sum, when in arrear; *And* all the benefit and advantage of the covenants and agreements contained in the said last mentioned indenture, on the part of the said [*grantor*], his heirs, executors, administrators, or assigns, to be observed and performed; *And* all the estate, &c. TO HAVE, HOLD, RECEIVE, and take the said annuity or yearly

sum of pounds, three pounds per cent. reduced bank annuities hereinbefore mentioned, and every part thereof, of and from the said annuity, or yearly sum of pounds, so secured by the said lastly hereinbefore recited indenture as aforesaid, and every part thereof, and of and from all and every the covenants and agreements in the same indenture contained, on the part of the said [*grantor*], his heirs, executors, or administrators, to be observed and performed, and of and from all actions, suits, claims, and demands whatsoever, for or in respect of the same annuity, or yearly sum, covenants and agreements, or any of them, or any matter or thing in anywise relating thereto; AND THESE PRESENTS FURTHER WITNESS, that in pursuance and further performance of the said agreement, and for the considerations hereinbefore expressed, HE the said [*grantor*], according to his right and interest, and so far as he can or may at law or in equity, but not further or otherwise, *Hath* bargained, sold, assigned, and set over, *And*

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Second witnessing part. Reassignment of the life-interest in the dividends.

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rent, or sum of pounds, powers, remedies, covenants, agreements, and all and singular other the premises hereby assigned, or intended so to be, unto the said [X. Y.], his executors, administrators, and assigns, absolutely, *But* nevertheless, *In trust* for the said [*mortgagee*], his executors, administrators, and assigns, for better securing to him and them the said sum of pounds and interest, secured by the said lastly hereinbefore recited indentures as aforesaid, *And* subject thereto, *In trust* for the said [*grantor*], &c. *to attend*, p. 178. AND THIS INDENTURE FURTHER WITNESSETH, that, &c. (*assignment from the trustee of the term created by the annuity deed, of the premiums therein comprised to* [Y. Z.], *for the residue of the term*) upon the same trusts, and subject to the same provisoes, as in and by the said hereinbefore recited indenture of the day of , are expressed and contained concerning the same; *But* so nevertheless that all the benefit and advantage of the same trusts and provisoes, so far as relates to the raising and paying the said annuity or yearly rent or sum, may henceforth be transferred, and belong to the said [Y. Z.], his executors, administrators, and assigns, as such trustee or trustees as hereinbefore mentioned."

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by these presents *Doth* bargain, sell, assign, and set over unto the said [*grantor*], his executors, administrators, and assigns(*d*), ALL THOSE the said dividends, and annual produce, which shall hereafter, during the life of the said [*grantor*] arise, accrue, or grow due upon, from, or in respect of the said sum of pounds, three pounds per cent. reduced bank annuities, in the said lastly recited indenture, and hereinbefore mentioned; *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], in, to, out of, or upon the same dividends, annual produce and premises and every or any part thereof, To HOLD, receive, and take the said dividends, annual produce, and all and singular other the premises hereby assigned, or intended so to be, unto the said [*grantor*], his executors, administrators, and assigns, for his and their own absolute use and benefit; AND the said [*grantee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT and declare with and to the said [*grantor*], his executors, administrators, and assigns, that he the said [*grantee*] hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said annuity, or yearly sum of pounds, and premises, hereby released, or intended so to be, or the said dividends, annual produce, and premises hereby assigned, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in anywise impeached, charged, released, assigned, affected, or incumbered, or whereby, or by reason, or in consequence whereof the said [*grantee*] is in any manner prevented or hindered from rightfully making and executing the release and assignment hereinbefore respectively contained. IN WITNESS, &c.

Covenant from the grantee that he has not incumbered.

(*d*) It is usual, in cases of this kind, to make the grantee re-assign the dividends, as well as release the annuities; but it is conceived that such re-assignment is unnecessary: as the grantee only acquired, under the annuity deed, an equitable interest in the dividends, *for the purpose of securing the annuity*, and the release of the annuity would itself determine his interest in the dividends;—and thus prevent his having any interest to assign. See *Head* v. *Lord Teynham*, 1 Cox, Ch. Ca. 57.

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RELEASE *of an Annuity charged upon a Freehold Estate, and Merger of the Term of Years created for securing the Annuity.*

THIS INDENTURE, made the day of ; Parties
BETWEEN [*grantee*] (*a*) of the first part; [*grantor*] of, &c. of the second part; and [*trustee of the term*] of, &c. of the third part; WHEREAS, by an indenture bearing date the day of , and made, or expressed to be made, between the said [*grantor*] of the first part, the said [*grantee*] of the second part, and the said [*trustee*] of the third part, the said [*grantor*] did, in consideration of the sum of pounds to him paid by the said [*grantee*], as therein is mentioned, give, grant, and confirm unto the said [*grantee*] and his assigns, during the term of the natural life of the said [*grantor*], one annuity or yearly rent or sum of pounds, of lawful money of Great Britain, to be charged and chargeable upon, and yearly issuing and payable out of ALL THAT, &c. [*parcels*] and their appurtenances; *To hold*, receive, and take, the said annuity or yearly rent or sum of pounds, unto the said [*grantee*] and his assigns, for and during the term of the natural life of the said [*grantor*], to be paid and payable by two even and equal half-yearly payments, on the day of , and the day of , in every year, without any deduction or abatement whatsoever, and with such powers of distress and entry, and

Recital of the annuity deed.

(*a*) It is very common, for the purpose of saving expense, to take the release and surrender by endorsement on the annuity deed. In such case the parties should be referred to as 'the within named;' and the annuity, the parcels, and the term of years should, on the first allusion to them, be referred to as 'the within mentioned.' The recitals will, in that case, commence with the notice of intention to repurchase, or of the payment of the arrears of the annuity. Indorsement.

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perception of the rents and profits of the said messuages or tenements, lands, hereditaments, and premises, for recovering and compelling payment of the said annuity, or yearly rent or sum, or any part thereof, as in the said indenture are mentioned (*b*); *And* by the said indenture, the said [*grantor*] did, for the considerations thereinbefore mentioned, grant, bargain, sell, and demise, unto the said [*trustee*], his executors, administrators, and assigns, all and singular

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(*b*) The following recitals are taken from a release of an annuity, where the annuity was granted for a term of years determinable on lives, and was further secured by a warrant of attorney and judgment entered up thereon.

Recital of an annuity deed.

"WHEREAS by an indenture, bearing date on or about the day of , and made or expressed to be made between the said [*grantor*] of the first part, the said [*grantee*] of the second part, and the said [*trustee*] of the third part; the said [*grantor*], (in consideration of the sum of pounds to him paid by the said [*grantee*], as therein is mentioned), did give and grant unto the said [*grantee*], his executors, administrators and assigns, one annuity, or clear yearly rent or sum of pounds, of lawful money of Great Britain, to be paid and payable during the term of 99 years, to be computed from the day next before the day of the date of the said indenture, if [A.] [B.] and [C.], or any of them, should so long live, and to be charged and chargeable upon and yearly issuing out of ALL that, &c. [*parcels*] and upon and out of all and singular houses, outhouses, &c. [*general words*], *To hold*, receive, and take the same annuity, or yearly rent or sum of pounds, unto the said [*grantee*], his executors, administrators, and assigns, from thenceforth, for and during the said term of 99 years, if the said [A.] [B.] and [C.] or any of them, should so long live, to be paid and payable by four equal quarterly payments, on the days following (that is to say) the day of , the day of , the day of , and the day of in every year, without any deduction or abatement whatsoever, together with a proportionable part of the said annuity, or yearly rent or sum of pounds, up to the day of the decease of the survivor of them, the said

the said messuages or tenements, lands, hereditaments, and premises thereinbefore described, and thereby charged with the said annuity, or yearly rent or sum of pounds, as aforesaid, and their appurtenances; *To hold* the same messuages or tenements, lands, hereditaments and premises, and their appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, for and during and unto the full end and term of 99 years, to be computed from the day of the date of the said indenture, if the said [*grantor*] should so long live, upon the usual trusts for securing the regular payment of the said annuity, or yearly rent or sum of pounds; *And* by the said indenture, the said [*grantor*] covenanted for himself, his heirs, executors, and administrators,

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[A.] [B.] and [C.], in case such survivor should happen to depart this life during the said term, on any other day than one of the quarterly days of payment therein and hereinbefore mentioned: *And* by the said indenture, the said [*grantor*] did give and grant unto the said [*grantee*], his executors, administrators and assigns, the usual powers of entry and distress, and detention of possession, and perception of rents and profits, for recovering and enforcing payment of the said annuity, or yearly rent or sum of pounds, when and in case the same, or any part thereof, should be in arrear; *And* by the said indenture, the said [*grantor*], for the considerations therein beforementioned, did grant and demise unto the said [*trustee*], his executors, administrators, and assigns, ALL that and those the said messuages or tenements, lands and hereditaments thereinbefore described, and thereby charged with the payment of the said annuity, or yearly rent or sum of pounds, as aforesaid, and their appurtenances; *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the said indenture, for and during and unto the full end and term of 99 years thence next ensuing, and fully to be complete and ended, if the said [A.] [B.] and [C.], or any of them, should so long live, without impeachment of waste, upon the trusts in the said indenture declared concerning the same, and hereinafter

OF ANNUITY. with the said [*grantee*] and his assigns, for the payment of the said annuity, or yearly rent or sum of pounds; on or at the days or times, and in manner therein and hereinbefore mentioned; *And* by the said indenture, the said [*grantee*] covenanted with the said [*grantor*], that in case the said [*grantor*], or his assigns, should at any time thereafter be minded and desirous of repurchasing the said annuity, or yearly rent or sum of pounds; and of such his or their intention, should give notice in writing to the said [*grantee*], or his assigns; then and in such case, he the said [*grantee*], or his assigns, should and would, on receiving of and from the said [*grantor*], or his assigns, all sums of money which should be then due, for or on account of the arrears of the said annuity, or yearly

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in part mentioned, (that is to say); Upon trust, that the said [*trustee*], his executors, administrators, and assigns, should permit and suffer the said [*grantor*], his heirs or assigns, to receive the rents, issues, and profits of the said hereditaments and premises, until the said annuity, or yearly rent or sum of pounds, or some part thereof, should be in arrear for the space of forty days; and when and so often as the same annuity, or yearly rent or sum, or any part thereof, should be in arrear by the said space of forty days, then upon trust, that the said [*trustee*], his executors, administrators or assigns, should, by and out of the rents, issues, and profits of the said hereditaments and premises, or by demising or mortgaging the same hereditaments and premises, or any part thereof, for all or any part of the same term, or by any other reasonable ways and means, levy and raise so much money as he or they should think it expedient to raise for paying the said annuity, or yearly rent or sum of pounds, or such part thereof as should for the time being be in arrear, and all costs and expenses which should have been occasioned by the nonpayment thereof, and should apply the money which should be so raised, or a competent part thereof, in payment and satisfaction of such arrears, costs, and expenses accordingly, and should pay the residue of the said monies (if any) unto the said [*grantor*], his heirs, executors, administrators, or assigns; *And* by the said indenture, the said [*grantor*]

rent or sum, up to the day of repurchasing the same, and all sums of money (if any) which should be then due for or on account of any costs, charges, or expenses, occasioned by the nonpayment of the same annuity, or yearly rent or sum, accept and take for the repurchase of the said annuity, or yearly rent or sum, the sum of pounds; *And* that the said [*grantee*], or his assigns, should and would thereupon, at the request, and at the proper costs and charges in the law of the said [*grantor*] or his assigns, release, assign, or otherwise dispose of the said annuity, or yearly rent or sum of pounds, unto the said [*grantor*], or his assigns, or as he or they should direct or appoint; *And* that the said [*trustee*], his execu-

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did, for himself, his heirs, executors, and administrators, covenant with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, administrators, or assigns, would pay the said annuity, or yearly rent or sum of pounds, thereby granted, on or at the days or times thereinbefore mentioned and appointed for the payment thereof, and also such proportional part thereof, as therein and hereinbefore is mentioned, in case the same should become payable; *And* by the said indenture it was provided and agreed, that it should be lawful for the said [*grantor*], his heirs or assigns, at any time thereafter, to repurchase the said said annuity, or yearly rent or sum of pounds, thereby granted, on giving three calendar months previous notice in writing, of his or their intention so to do, to the said [*grantee*], his executors, administrators, or assigns, and on paying to him or them the sum of pounds, together with all arrears of the said annuity, or yearly rent or sum of pounds, up to the day of repurchasing the same, and all costs and expenses which should have been incurred by reason of the nonpayment thereof; *And* by the said indenture now in recital, the said [*grantor*] did appoint the said [*trustee*] to be receiver and collector of the rents, issues and profits of the said hereditaments and premises thereinbefore charged with the said annuity, or yearly rent or sum of pounds, and did give unto

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tors, administrators, or assigns, should and would, at the like request, and costs and charges, surrender or assign the said messuages or tenements, lands, hereditaments, and premises thereby demised, and their appurtenances, unto the said [*grantor*] and his assigns, or to such person or persons as he or they should in that behalf nominate and appoint; *And* that they the said [*grantee*] and [*trustee*], or their respective assigns, should and would, at the like request, costs and charges, do every act, deed, matter, and thing, necessary or advisable for releasing, assigning, and discharging the said annuity, or yearly rent or sum of pounds, and the securities given for the payment of the same, as by the said [*grantor*], or his assigns, or his or their counsel in the law, should be reasonably advised or required: AND WHEREAS the said annuity, or yearly rent or sum of pounds, secured by the said hereinbefore recited indenture, as aforesaid, hath been

That the annuity has been paid up to the — day of ——

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him the usual powers for recovering the same rents, issues, and profits, in case of nonpayment thereof, and did direct him, out of the said rents, issues, and profits, to pay unto the said [*grantee*], his executors, administrators, and assigns, the said annuity, or yearly rent or sum of pounds thereby granted, as aforesaid, as and when the same should become due, and all costs and expenses which should be occasioned by the nonpayment thereof: AND WHEREAS the said annuity, or yearly rent or sum of pounds, granted and secured by the said hereinbefore recited indenture, as aforesaid, was further secured by the warrant of attorney of the said [*grantor*], bearing even date with the same indenture, authorising certain attornies, therein named, to appear for the said [*grantor*] in his Majesty's court of King's Bench, at Westminster, and suffer a judgment by "*nil dicit*," or otherwise, to pass against him in an action of debt for the sum of pounds, and costs, at the suit of the said [*grantee*], and by a judgment entered up against the said [*grantor*], in the said court, under the authority of the said warrant of attorney."

duly paid to the said [*grantee*], up to the day of now last past, as he the said [*grantee*] doth hereby admit and acknowledge; AND WHEREAS the said [*grantor*] did, on the day of this present month of , give notice in writing to the said [*grantee*], of his intention to repurchase the said annuity, or yearly rent or sum of pounds, pursuant to the power to him for that purpose given or reserved in and by the said hereinbefore recited indenture, as aforesaid, and he hath this day paid to the said [*grantee*], the sum of pounds for such repurchase, and the further sum of pounds for the arrears of the said annuity, or yearly rent or sum, up to and inclusive of the day of the date of these presents, (making together the sum of pounds,) as he the said [*grantee*] doth hereby admit and acknowledge; (*c*) AND WHEREAS the the said [*grantee*] and [*trustee*] have respectively agreed, at the request of the said [*grantor*], to make and execute the release and assignment or surrender hereinafter contained; NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain, by the said [*grantor*] to the said [*grantee*] paid, at or immediately before the sealing and delivering of these presents, (the receipt whereof is hereby acknowledged); HE the said [*grantee*] *Hath* remised, released, acquitted, and for ever discharged; *And* by these presents *Doth* remise, release, acquit, and for ever discharge the said [*grantor*], his heirs, executors, and administrators, and every of them, and the said messuages or tenements, lands, hereditaments and premises hereinbefore described, and so charged with the pay-

that the grantor duly gave notice of his desire to repurchase, and has paid the arrears, and the repurchase-money.

First witnessing part.

The grantee of the annuity releases it.

(*c*) If a warrant of attorney has been given for securing the annuity, let a recital of the entry of satisfaction on the judgment be inserted in this place:

Entry of satisfaction on a judgment.

"AND WHEREAS the said [*grantee*] hath this day caused satisfaction to be entered up on the record of the said judgment, obtained against the said [*grantor*], under the hereinbefore recited warrant of attorney, as aforesaid."

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ment of the said annuity, or yearly rent or sum of pounds, as aforesaid, and every of them, and every part thereof, of and from the same annuity, or yearly rent or sum of pounds, and all future payments thereof, and all powers and remedies whatsoever for compelling and enforcing payment thereof, and of and from all actions, suits, causes of action and suit, entries, distresses, executions, claims and demands whatsoever, for or on account of the same annuity, or yearly rent or sum of pounds, or any matter or thing in any wise relating thereto.

Covenant from the annuitant that he has done no act to incumber.

(*Covenants from the grantee with the grantor, that he has done no act whereby the annuity is incumbered, or he is prevented from releasing the same; see the last precedent.*) AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, (*and of a nominal consideration from the* [*grantor*] *to the* [*trustee*];) (the receipt, *&c.*) HE, the said [*trustee*], at the request and by the direction of the said [*grantee*], and upon the acceptance of the said [*grantor*], (testified by their respectively being parties to and sealing and delivering these presents), *Hath* granted, bargained, sold, assigned, and surrendered, *And* by these presents *Doth* grant, bargain, sell, assign, and surrender, unto the said [*grantor*], and his assigns (*d*); ALL THOSE the said messuages or tenements, lands, hereditaments, and premises hereinbefore described, and so comprised in and demised by the said hereinbefore recited indenture as aforesaid, with their and every of their appurtenances; *And* all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*trustee*], in, to, out of, or upon the

Second witnessing part.

The trustee of the term surrenders it to merge.

Surrender of terms.

(*d*) In this case, the grantor of the annuity was only tenant for his own life. When the person to whom a term is surrendered has the fee, it is usual to assign and surrender it "to him *and his heirs*;" and when he has a reversionary term, to assign and surrender it "to him, *his executors and administrators*;" but in neither case are the words of limitation of any importance, as the term is on the surrender, immediately extinguished in the reversion, and cannot, in the one case, go to the heirs, or, in the other, to the executors or administrators.

same premises, and every or any part thereof: *To the end and intent* that the said term of 99 years, created in the said messuages or tenements, lands, hereditaments, and premises, hereby assigned and surrendered, or intended so to be, and their appurtenances, by the said last mentioned indenture, as aforesaid, may from henceforth be merged and extinguished in the reversion and freehold of the same messuages or tenements, lands, hereditaments and premises, and their appurtenances; *And* the said [*trustee*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT and declare with and to the said [*grantor*] and his assigns, that he the said [*trustee*] hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby, or by reason or means whereof the said messuages or tenements, lands, hereditaments and premises hereby assigned and surrendered, or intended so to be, or any of them, or any part thereof, or the said term of 99 years therein, are, is, can, shall, or may be in anywise impeached, charged, assigned, surrendered, affected, or incumbered. IN WITNESS, &c.

OF ANNUITY

Covenant from the trustee of the term that he has done no act to incumber.

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

RELEASE *of an Estate from a Jointure Rent-Charge, for the purpose of enabling the Owner of the Estate to sell Part of it; and* ASSIGNMENT *of a Term of Years created for securing the Rent-Charge to a Trustee to attend the Inheritance: The Consideration for the Release being the Grant of a new Rent-Charge, out of such Part of the Estate as it was not intended to sell* (*a*).

THIS INDENTURE, made the day of , BETWEEN [*jointress*] of, &c. of the first part; [*owner*] of,

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(*a*) It frequently happens in practice, that a person entitled to a rent-charge, is desirous of exonerating part of the lands charged therewith from the payment of it; but, it being a rule of law, that if a person have a rent-charge issuing out of 20 acres of land, and he releases all his right in one acre, this will extinguish the whole rent-charge, 2 Roll. Abr. 414; difficulties have arisen as to the mode of carrying such an exoneration into effect, without extinguishing the entire rent.

The mode formerly in use was, for the grantee of the rent-charge to join in the conveyance of the lands intended to be exonerated, and thereby release them from the payment of the rent-charge; and to insert a proviso in the deed, that the other lands should still continue subject to the rent-charge. This mode was adopted upon the authority of Lord *Coke*, that such proviso would operate as a grant of a new rent-charge, Co. Litt. 148, a.; but it seems open to the objection,—that such new grant would be subject to any incumbrances created between the periods of the grant of the original rent-charge, and its extinguishment; and, therefore, that it cannot be safely adopted where any such incumbrances exist. Besides, if the title to the rent-charge is to depend upon a *new* grant, such grant should be made in a formal way, and not in the indirect manner suggested. In either case the expense will be nearly the same: in the former case, there must be two parts of the

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

&c. of the second part; [*assignors*] of, &c. of the third part; and [*assignee*], of the fourth part. WHEREAS by indentures of lease and release, bearing date respectively the and days of , the release being made, or expressed to be made, between A. B. of, &c. and the said [*jointress*], then his wife, of the first part; [G.] of, &c. and [H.] of, &c. of the second part; [I.] of, &c. and [J.] of, &c. of the third part; the said [*assignors*], of the fourth part, and [Z.] of, &c. of the fifth part; ALL THAT the manor or lordship of , in the county of , &c. &c. (*setting out the parcels*), with their rights, members, and appurtenances, were (for the considerations in the said indenture of release mentioned, in pursuance of the marriage articles therein recited,) assured and limited to the uses and in the manner in the said indenture declared concerning the same, and in part

Recital of the settlement, by which the jointure rent-charge and term of years were created;

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conveyance,—one to go with the land released, and the other with the new rent-charge; in the latter case, there should be two distinct deeds,—the first, a release of all the lands from the rent-charge, and the second, a formal grant of a new rent-charge to be issuing out of the lands not intended to be exonerated.

Where incumbrances have been created subsequently to the grant of the rent-charge, from the payment of which part of the lands are desired to be discharged, the following modes have been adopted to effect the discharge, and, at the same time, avoid an extinguishment of the entire rent. The first mode has been, to make the grantee enter into a *covenant* that he will not enter or distrain upon the premises conveyed for the recovery of the rent-charge; the second has been, to make the grantee of the rent-charge enter into an *agreement* with the purchaser, that he will, on request, execute such a conveyance as shall be deemed necessary for the purpose of discharging the lands in question from the payment of the rent-charge, so as such conveyance shall not bar the grantee of the rent-charge from levying it out of the other lands charged therewith; and that until such conveyance shall be executed, the grantee of the rent-charge shall not enter or distrain on the lands sold for the purpose of compelling payment thereout of the said rent; and the third mode has been, to make the grantee of the rent-charge convey the same rent to a trustee, upon trust, to forbear raising the same out of the lands intended to be exonerated, and to raise the same out of lands intended to continue liable thereto.

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

hereinafter mentioned, (that is to say); *To the use* of the said [G.] and [H.], their executors, administrators, and assigns, for the term of ninety-nine years, to be computed from the day next before the day of the date of the said indenture of release, *Upon* certain trusts thereinafter declared concerning the same, which have been since fully performed or satisfied, and which term hath ceased by virtue of a proviso for cesser for that purpose in the said indenture of release contained; *And* after the expiration or sooner determination of the said term of ninety-nine years, *And* in the mean time subject thereto, and to the trusts thereof, *To the use* of the said [A. B.] and his assigns for his life, without impeachment of waste, with a limitation *To the use* of the said [I.] and [J.] and their heirs, during the life of the said [A. B.], *In trust* for him the said [A. B.] and his assigns, and by the usual ways

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To the first mode it may be objected, that such a covenant would operate as a release of the whole rent-charge, as a covenant 'never to sue,' has been held to be a release; *Deux* v. *Jefferies*, Cro. Eliz. 352; and this seems to have been the construction put upon such a covenant in the case of *Butler* v. *Mounings*, Noy, 5: although *Anderson*, J. entertained a different opinion.

The second mode appears preferable to the first, as the agreement not being a deed, cannot be pleaded as a release at law: and in equity, the purchaser might obtain upon it an injunction to restrain the grantee of the rent-charge from securing it out of the lands purchased; but it is liable to the observation, that the rent-charge may afterwards be conveyed to a purchaser without notice of the agreement, and who would, consequently, not be bound by it.

The last mode is the most free from objection, and the best that has yet been suggested, and is now generally adopted by conveyancers; but it is perhaps doubtful whether, on the purchase of an estate free from incumbrances, the purchaser would be bound to consider such an arrangement as amounting to a sufficient discharge of a rent-charge to which the estate might be liable: although after trusts like those alluded to have been declared, the owner of the rent-charge cannot resort for payment of the rent to the lands out of which it has been declared that the rent shall not be raised, without subjecting himself to the expenses which would be attendant on an application for an injunction to restrain him from so doing.

and means to support the contingent remainders thereinafter limited from being destroyed; and after the decease of the said [A. B.], *To the use* and intent that the said [*jointress*] and her assigns should, during her life, receive and take out of the said hereditaments and premises, one annual sum, or yearly rent-charge of pounds, for her jointure, and in bar of dower, by four equal quarterly payments, on the four most usual days of payment in the year, together with the usual powers of entry and distress, and perception of the rents and profits of the hereditaments and premises charged with the said annual sum or yearly rent, in case of the nonpayment of the same annual sum or yearly rent, or any part thereof; *And* subject thereto, *To the use* of the said [*assignors*], their executors, administrators, and assigns, for the term of five hundred years, to be computed from the day of the decease of the said [A. B.], without impeachment of waste, *Upon* the trusts in the said indenture of release declared concerning the same, for the better securing the payment of the said annual sum, or yearly rent-charge of pounds, and all costs and expenses which should be occasioned by the nonpayment thereof; *And* after the expiration or sooner determination of the said term of five hundred years, and in the mean time subject thereto, and to the trusts thereof, *To the use* of the first and other sons of the said [A. B.] by the said [*jointress*], severally and successively, according to their respective priorities of birth, in tail male, with divers remainders over; AND WHEREAS the said [A. B.] departed this life on or about the day of leaving issue by the said [*jointress*], the said [*owner*], his only son, who thereupon became entitled, under the limitations contained in the said hereinbefore recited indenture of release, to the said manors or lordships, messuages or tenements, lands, and other hereditaments therein comprised, as tenant in tail male in possession, subject to the said annual sum or yearly rent-charge of pounds, and the said term of five hundred years, created for better securing the same, as aforesaid; AND WHEREAS, by indentures of lease and release, bearing date respectively the and days of , the release being of three parts, and made, or expressed to be made, between the said [*owner*] of the first part, [*tenant*

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

of the death of tenant for life, leaving the jointress and an only son him surviving;

and of the conveyance whereby the estates were discharged from the

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

to the præcipe] of the second part, and [*demandant*] of the third part, and by a common recovery suffered in his Majesty's Court of Common Pleas, at Westminster, in term, in the year of the reign of his present Majesty King George the Fourth, pursuant to a covenant or agreement for that purpose, in the said indenture of release now in recital contained, the said manors or lordships, messuages or tenements, lands and other hereditaments hereinbefore described, and so comprised in and conveyed by the said hereinbefore recited hereditaments, as aforesaid, with their rights, members, and appurtenances, were discharged from the said estate in tail male, of the said [*owner*] therein, and the remainders and reversion thereupon expectant or depending, and were assured and limited *To the use* of the said [*owner*], his heirs and assigns for ever; AND WHEREAS the said [*owner*] being desirous of selling part of the said manors or lordships, messuages or tenements, lands and hereditaments hereinbefore described, and so comprised in and conveyed by the said hereinbefore recited indentures, as aforesaid, hath requested the said [*jointress*], to release the whole of the said manors or lordships, messuages or tenements, lands and hereditaments, from the said annual sum or yearly rent of pounds, so limited to her for her life for her jointure, as aforesaid, and to direct the said [*assignors*] to assign the said term of five hundred years, created in the same manors or lordships, messuages or tenements, lands and hereditaments, as hereinbefore is mentioned, unto the said [*assignee*], his executors, administrators, and assigns, for the residue of the same term, *In trust* for him the said [*owner*], his heirs and assigns, and to attend the inheritance; *And* in order to induce the said [*jointress*] to comply with such request, the said [*owner*] hath proposed and agreed, immediately after the execution of such release and assignment, to charge such of the said manors or lordships, messuages or tenements, lands and hereditaments, as he is not desirous of selling, and which are of the annual value of pounds and upwards, with the payment to the said [*jointress*] and her assigns, during her life, of a like annual sum, or yearly rent-charge of pounds, and the usual remedies for recovering the same

son's entail, and limited to him in fee.

Recital that the owner of the estate, being desirous to sell part of it, has applied to jointress to release the whole from her jointure, and in lieu thereof to accept a new rent-charge out of that part of the estate which is not intended to be sold;

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

when in arrear, and to create a term of years in the said last mentioned hereditaments and premises, for securing the same annual sum or yearly rent-charge of pounds; AND WHEREAS the said [*jointress*], being satisfied that the said hereditaments and premises, so proposed to be charged as aforesaid, are of sufficient annual value for securing the due payment of the said annual sum, or yearly rent-charge of pounds, so agreed to be granted as hereinbefore is mentioned, hath consented to accept of such last-mentioned annual sum or yearly rent-charge of pounds, in lieu of the said original annual sum or yearly rent-charge of pounds, and to comply with the request of the said [*jointress*], in respect of such release and assignment of the said term of five hundred years, as aforesaid: AND WHEREAS, all arrears of the said annual sum or yearly rent charge of pounds, so limited to the said [*jointress*] and her assigns for her jointure as aforesaid, hath been paid up to the date of the day of these presents, as she, the said [*jointress*], doth hereby admit and acknowledge: AND WHEREAS, by an indenture already prepared and engrossed, and bearing or intended to bear even date with these presents, and made or intended to be made between the said [*owner*] of the first part, the said [*jointress*] of the second part, the said [*assignors*] of the third part, the said [*assignee*] of the fourth part, and [X. Y.] therein described, of the fifth part, and intended to be executed immediately after the execution of these presents, it is intended (*b*) that the said [*owner*] should, in conside-

and that she has agreed to comply with such application.

Recital that all arrears of the jointure rent-charge have been paid;

and that by an indenture of even date, it is intended that the owner of the estate should grant a newrent-charge to the jointress, in lieu of the original rent, to be issuing out of the estates not intended to be sold;

(*b*) This precedent is drawn in the most usual and approved form; but it is to be observed, that as the release of the jointure rent-charge is made in consideration of the grant to be contained in the recited indenture of even date therewith, it may be contended that there is no effectual release of the rent *in equity* till that deed is executed; and therefore that the owner of the land intended to be exonerated, or the purchaser must, to prove the estate discharged, have the means of shewing, that the deed of grant of even date has been executed. To do this, a memorandum of its execution, endorsed on the deed of release, is generally deemed sufficient; but, in some cases, an attested copy of the deed of grant, and a covenant for its production, have been insisted on. In many instances, the jointure rent-charge is ex-

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ration of the said release and assignment, hereinafter contained, grant unto the said [*jointress*] and her assigns, during her life, in lieu of and in substitution for the said annual sum or yearly rent-charge hereinafter released, an annual sum or yearly rent-charge of pounds to be issuing and payable out of, and charged and chargeable upon the said hereditaments and premises in the said indenture now in recital particularly mentioned, being such part of the said manors or lordships, messuages or tenements, lands, hereditaments, and premises, hereinbefore described, and so comprised in and conveyed by the said hereinbefore recited indentures as aforesaid, as it is not intended should at present be sold, and their appurtenances, together with the usual powers of distress and entry, and perception of the rents and profits of the said hereditaments and premises, for recovering and compelling payment of the same annual sum or yearly rent-charge, in case the same or any part thereof should be in arrear; *And* by the said indenture now in recital, it is intended that the said [*owner*] should grant, bargain, sell, and demise unto the said [*assignors*], their executors, administrators, and assigns, ALL and singular the said hereditaments and premises, thereby charged, or intended to be charged, with the said annual sum or yearly rent-charge of pounds granted, *To hold* the same unto the said [*assignors*], their executors, administrators, and assigns, for the term of three hundred years, to commence and be computed from the day of the date of the said indenture now in recital, without impeachment of waste, *Upon* the trusts in the same indenture declared, for the better securing the regular payment of the same annual sum or yearly rent-charge; *And* by the said indenture now in recital, it is intended that the said [*assignee*] should bargain, sell, and assign unto the said [X. Y.], his executors, administrators, and assigns, ALL such and so many of the said hereditaments, and premises, comprised in the said therein and hereinbefore men-

and should demise the hereditaments and premises to be charged therewith to a trustee for raising the same.

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pressed to be released, in consideration of the natural love and affection of the jointress for the owner of the estate, or in consideration of the provision which the owner of the estate has made for her, without any reference to the specific provision, or the deed, or manner by which it has been secured.

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

tioned term of five hundred years, as by the said indenture now in recital are charged, or intended to be charged, with the said annual sum or yearly rent-charge of pounds thereby granted, and their appurtenances, *To hold* the same unto the said [X. Y.], his executors, administrators and assigns, for the then residue of the said term of five hundred years, *In trust* for the said [*jointress*] and her assigns, for further securing the payment of the said last mentioned annual sum or yearly rent charge, and subject thereto, *In trust* for the said [*owner*], his heirs and assigns, and to attend the inheritance. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement on the part of the said [*jointress*], and in consideration of the grant made or intended to be made by the said lastly hereinbefore recited indenture, as aforesaid, SHE the said [*jointress*] *Hath* acquitted, released, and for ever discharged, and by these presents *Doth* acquit, release, and for ever discharge ALL and singular, the said manors or lordships, messuages or tenements, lands and hereditaments hereinbefore described, and comprised in and conveyed by the said recited indentures of lease and release, of the and days of as aforesaid, and their rights, members, and appurtenances, of and from the said annual sum or yearly rent charge of pounds, which by the said indenture of release was so limited to the said [*jointress*] and her assigns during her life for her jointure, as hereinbefore is mentioned, and all future payments thereof, and every part thereof respectively; *And* of and from all entries, distresses, actions, suits, claims, and demands whatsoever respecting the same, or in any wise relating thereto. (*Covenant from* [*jointress*], *that she has done no act to incumber the rent charge, or to prevent her making the release*). AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*jointress*], and in consideration of the grant made or intended to be made by the said lastly hereinbefore recited indenture as aforesaid, and also in consideration of the sum of ten pounds, of lawful money of Great Britain, by the said [*assignee*] to the said [*assignors*] paid, at or before, &c. (the receipt, &c.); THEY the said [*assignors*], at the

First witnessing part.

Release of the jointure rent-charge.

Second witnessing part.

Assignment of the term to the trustee to attend the inheritance.

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

request and by the direction of the said [*jointress*], and upon the nomination of the said [*owner*], (testified, &c.) *Have* and each of them *Hath* bargained, sold, assigned, and set over, and by these presents *Do*, and each of them *Doth* bargain, sell, assign and set over unto the said [*assignee*], his executors, administrators, and assigns, ALL and singular the said manors or lordships, messuages or tenements, lands and hereditaments hereinbefore described, and so comprised in and conveyed by the said hereinbefore recited indentures of the and days of , as aforesaid, and which by the said last mentioned indenture of release, was limited to the use of the said [*assignors*], their executors, administrators and assigns, for the said term of five hundred years, as hereinbefore is mentioned, with their rights, members, and appurtenances; *And* all the estate, &c. TO HAVE AND TO HOLD the said manors or lordships, messuages or tenements, lands, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*assignee*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of five hundred years, *In trust* for the said [*owner*], his heirs and assigns, and to be assigned and disposed of as he or they shall order or direct; *And* in the mean time, *In trust*, to permit the same term to wait upon and attend the reversion, freehold, and inheritance of the said manors or lordships, messuages or tenements, lands, hereditaments, and premises, and their rights, members, and appurtenances, and to protect the same from all mesne incumbrances, (if such there be). (*Covenant from the* [*assignors*] *with the said* [*assignee*], *that they have done no act to incumber the said manors and other hereditaments hereby assigned, &c.* See ante, p. 169). (*b*). IN WITNESS, &c.

(*c*) For the reason stated *ante*, p. 175, it seems desirable, that on a deed of the above kind, a memorandum to the following effect should be endorsed, and signed by the several parties.

"BE IT REMEMBERED, that immediately after the exe-

cution of the within written indenture, the within recited indenture of even date therewith was duly executed by us, in the presence of the same persons who have attested our execution of the within written indenture: As witness our hands this day of ."

OF AN ESTATE FROM A JOINTURE RENT-CHARGE.

Winesses, A. B. *Jointress.*
C. D. *Owner.*
Assignors.
Assignee.

DEED TO EXONERATE PART OF AN ESTATE IN SETTLEMENT FROM PIN MONEY, &C.

DEED *to Exonerate Part of an Estate in Settlement from Pin Money, a Jointure Rent Charge, and some gross Sums of Money directed to be raised for the Lady, and for the Portions of the Younger Children, under the Trusts of a Term of Years; and to more effectually subject the Remainder of the Estates to those Charges.*

THIS INDENTURE, made the day of , **BETWEEN** [*gentleman*] of, &c. and [*lady*] his wife, of the first part; [*intended trustees of the yearly rent of one thousand pounds, after mentioned*] of the second part; [*trustees of the term of ninety-nine years after mentioned*] of the third-part; [*trustees of the term of fifteen hundred years after mentioned*] of the fourth part; and [*intended trustee of the several terms of one hundred and fifty years, two thousand years, seventy years, and fourteen hundred and ninety-nine years, after mentioned*] (*a*) of the fifth part.

Parties.

(*a*) The same person was made trustee of all the derivative terms, in order to save the expense, and prevent the inconvenience which would attend having many persons parties. On examining the precedent, it will be perceived, that no merger of any of the terms can take place, as there is, in each case, an outstanding intervening term, which will prevent such merger.

DEED TO EXOTERATE PART OF AN ESTATE INSETTLEMENT FROM PIN-MONEY, &c.

Recital of a marriage settlement, whereby certain estates were limited after the marriage to trustees for 99 years, if gentleman and lady should so long live, upon trusts after-mentioned;

WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , the release being made, or expressed to be made, between the said [*gentleman*] of the first part; the said [*lady*] by her then name and description of [F. H.] of, &c. spinster, of the second part; [*trustees of the term of ninety-nine years*] of the third part; [*trustees to preserve contingent remainders*] of the fourth part; [*trustees of the term of fifteen hundred years*] of the fifth part; and [*releasee to uses*] of the sixth part, (being the settlement executed previously to and in contemplation of the marriage then intended and since solemnized between the said [*gentleman*] and [*lady*],) the closes or pieces or parcels of land and hereditaments hereinafter described, and intended to be hereby bargained, sold, and demised, and their appurtenances, were (amongst and together with divers manors and other hereditaments in the said indentures particularly described, and therein mentioned to be situate in the county of and for the considerations in the same indenture of release expressed) conveyed by the said [*gentleman*] unto the said [*releasee to uses*] and his heirs, *To the use* of the said [*gentleman*] and his heirs, until the said then intended marriage should be solemnized, and from and after the solemnization thereof, *To the uses*, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements in the said indenture of release limited, expressed, and contained of and concerning the same, and in part hereinafter mentioned, (that is to say,) *To the use* of the said [*trustees of the term of ninety-nine years*], their executors, administrators, and assigns, for and during the term of ninety-nine years, to be computed from the day of the date of the said indenture of release, if both of them the said [*gentleman*] and [*lady*] should so long live, upon the trusts thereinafter declared concerning the same and hereinafter mentioned; *And* from and after the expiration or sooner determination of the said term of ninety-nine years, and in the mean time subject thereto, and to the trusts thereof, *To the use* of the said [*gentleman*] and his assigns for and during the term of his natural life, without impeachment of waste, with a limitation *To the use* of the said [*trus-*

remainder to the gentleman for his life;

remainder to trustees to preserve contingent remainders;

tees to preserve contingent remainders] and their heirs, during the life of the said [*gentleman*], *In trust* for him and his assigns, and by the usual ways and means to preserve the contingent remainders thereinafter limited from being destroyed; *And* after the decease of the said [*gentleman*], *To the use and intent* that the said [*lady*], (in case she should survive the said [*gentleman*]), or her assigns, should and might during the remainder of her life, receive and take a clear annual sum or yearly rent of one thousand pounds of lawful money of Great Britain, to be charged and chargeable upon and yearly issuing and payable out of the said manors, messuages or tenements, lands, and hereditaments thereby released, and their appurtenances, and to be paid and payable by four equal quarterly payments in every year, and the first quarterly payment thereof to be made at the expiration of three calendar months next after the decease of the said [*gentleman*], *Together* with the usual powers and remedies of entry and distress, and detention of possession and perception of the rents and profits of the said hereditaments and premises, when and in case the same annual sum or yearly rent, or any part thereof, should be in arrear, such annual sum or yearly rent charge to be for the jointure of the said [*lady*], and in lieu, bar, and full satisfaction of all dower, freebench or other customary estate, to which the said [*lady*] might on the decease of the said [*gentleman*] become entitled as his widow, *And* subject to the said annual sum or yearly rent charge of one thousand pounds, and the powers and remedies thereinbefore given and limited for recovering and compelling payment thereof, *To the use* of the said [*trustees of the term of fifteen hundred years*] their executors, administrators, and assigns, for and during the term of fifteen hundred years, to be computed from the day of the decease of the said [*gentleman*], without impeachment of waste, upon the trusts thereinafter declared concerning the same, and hereinafter in part mentioned; *And* from and after the expiration or sooner determination of the said term of fifteen hundred years, and in the mean time subject thereto, and to the trusts thereof, *To the use* of the first and every other son of the said [*gentleman*] by the said [*lady*] severally and successively,

DEED TO EXONERATE PART OF AN ESTATE IN SETTLEMENT FROM PIN-MONEY, &c.

remainder to the intent that the lady might receive a rent-charge of 1000*l.* for her life, for her jointure, and in bar of dower.

and subject thereto, to trustees for 1500 years, upon the trusts after-mentioned;

remainder to the first and other sons of the marriage, successively in tail male;

DEED TO EXONERATE PART OF AN ESTATE IN SETTLEMENT FROM PIN-MONEY, &c.

remainder to the gentleman in fee.

Declaration that the term of 99 years was created for raising 200*l.* a-year for the lady during her coverture, for her separate use, and as pin-money.

according to his respective seniority in tail male, and for default of such issue, *To the use* of the said [*gentleman*], his heirs and assigns for ever; *And* by the said indenture of release it was declared, that the said hereditaments and premises thereinbefore limited *To the use* of the said [*trustees of the term of ninety-nine years*], their executors, administrators, and assigns, for the said term of ninety-nine years as aforesaid, were so limited to them upon trust that they the said [*trustees of the said term of ninety-nine years*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should by and out of the rents and profits of the said hereditaments and premises, or by sale or mortgage of the same hereditaments and premises, or any part thereof, for all or any part of the said term, or by other the ways and means in the said indenture mentioned, levy and raise, during the joint lives of the said [*gentleman*] and [*lady*], a clear annual sum of two hundred pounds, by four equal quarterly portions, on the four most usual days of payment in the year, and should pay and apply the same when raised, to such person or persons only, and for such intents and purposes only, as the said [*lady*], notwithstanding her said intended coverture, should from time to time, by any writing under her hand, direct or appoint, but not so as to deprive herself of the benefit thereof by sale, charge, mortgage, or otherwise in the way of anticipation; and in default of and until such direction or appointment, into the proper hands of the said [*lady*], for her own sole and separate use and benefit, by way of pin money, and exclusively of the said [*gentleman*], and free from his control and engagements; *And* should also by the ways and means thereinbefore mentioned, or some of them, levy and raise, and pay the costs, charges, and expenses which should be incurred in or about the execution of the trusts of the said term; *And* by the said indenture of release it was declared, that the said hereditaments and premises thereinbefore limited *To the use* of the said [*trustees of the said term of fifteen hundred years*], their executors, administrators, and assigns, for the said term of fifteen hundred years as aforesaid, were so limited to them upon trust, that in case the said annual sum or yearly rent

Declaration that the term of 1500 years was created for raising the jointure rent-charge of 1000*l.*

charge of one thousand pounds, thereinbefore limited to the said [*lady*] and her assigns during her life, for her jointure as aforesaid, or any part thereof, should be in arrear and unpaid for the space of thirty days next after the same should become payable, the said [*trustees of the said term of one thousand years*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should, by and out of the rents and profits of the said hereditaments and premises comprised in the said term of one thousand years, or by sale or mortgage of the same hereditaments and premises, or any part thereof, for all or any part of the same term, or by such other ways and means as they or he should think proper, levy and raise so much of the said annual sum or yearly rent charge as should, for the time being, be in arrear and unpaid, together with the costs and expenses which should have been occasioned by the non-payment thereof, or in executing the trusts for raising the same; and should apply the money so raised in payment of such arrears, costs, and expenses accordingly; *And* upon further trust, that in case the said [*lady*] should survive the said [*gentleman*], they the said [*trustees of the said term of fifteen hundred years*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should, with all convenient speed after the decease of the said [*gentleman*], by the ways and means thereinbefore mentioned, or some or one of them, levy and raise the sum of five hundred pounds, of lawful money of Great Britain, with interest for the same, after the rate of four pounds for one hundred pounds by the year, to be computed from the day of the decease of the said [*gentleman*], until the said sum should be raised, and should pay the monies which should be so raised as last aforesaid, when raised, unto the said [*lady*], her executors, administrators, or assigns, for her and their own use and benefit; *And* upon this further trust, that in case there should be one or more child or children of the said [*gentleman*] by the said [*lady*] (other than and besides an eldest or only son, for the time being entitled under the limitations thereinbefore contained, to the said hereditaments and premises, either in possession, or in remainder, immediately expectant upon the decease of the

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a gross sum of 500*l.* for the lady, if she survived the gentleman;

and a sum of——pounds for the portions of the younger children of the marriage.

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said [*gentleman*], they the said [*trustees of the said term of fifteen hundred years*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should, after the decease of the said [*gentleman*], or in his life time with his consent in writing (but subject, and without prejudice, to the trusts thereinbefore declared of the said term of fifteen hundred years), by mortgage, sale, demise, or other disposition of the said hereditaments and premises comprised in the said term of fifteen hundred years, or some part thereof, for all or any part of the same term, or by and out of the rents and profits of the said hereditaments and premises, or by bringing actions against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear, or by all or any of the said ways or means, or by any other ways and means which they the said [*trustees of the term of fifteen hundred years*], or the survivor of them, or the executors, administrators, or assigns of such survivor should think fit, levy and raise, or borrow and take up at interest, for the portion or portions of such child or children (other than, or not being an eldest or only son, for the time being entitled as aforesaid), the sum of pounds, of lawful money of Great Britain, to be vested in and paid to such child or children, at such times, in such shares and manner, and subject to such powers, conditions, and provisoes, as in the said indenture are mentioned; (*And also, in the usual manner, to raise, after the decease of the said* [*gentleman*], *annual sums for the maintenance and education of the younger children, till their portions should be raiseable, and likewise the costs and expenses of executing the trusts of the term; with the usual proviso for cesser of the term on performance of the trusts*)(*a*): AND WHEREAS there is issue of the said [*gentleman*] and [*lady*] his wife, two daughters, namely, [C. H.], who is now an infant of the age of years, or thereabouts, and [M. H.], who is now an infant of the age of years, or thereabouts, and no other child; and it is considered by the said [*gentleman*] and [*lady*] to be improbable that they will have any other child;

Recites that there are two daughters of the marriage—both infants; and that it is not likely there will be any other child;

(*b*) It is unnecessary, in this place, fully to recite these trusts and proviso. For forms of such trusts and proviso, the reader is referred to the Index, SETTLEMENTS, TRUSTS, and PROVISOES.

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AND WHEREAS the said [*gentleman*] is desirous of raising the sum of pounds, or thereabouts, by sale or mortgage of a certain portion of the said hereditaments and premises comprised in and conveyed by the said hereinbefore recited indentures as aforesaid; and in order to enable him so to do, hath requested the said [*lady*] to concur with him in procuring the said closes or pieces or parcels of land and hereditaments hereinafter described, and intended to be hereby bargained, sold, and demised, and their appurtenances, to be discharged in manner hereinafter mentioned, of and from the said annual sum of two hundred pounds, payable to the said [*lady*] during the joint lives of herself and the said [*gentleman*], under the trusts of the said term of ninety-nine years as aforesaid, and also of and from the said annual sum or yearly rent charge of one thousand pounds so limited to the said [*lady*] and her assigns, for her life, as hereinbefore is mentioned, and the powers and remedies for recovering the same, and also of and from the said gross sum of five hundred pounds so directed to be raised for her the said [*lady*], after the decease of the said [*gentleman*], under the trusts of the said term of fifteen hundred years as hereinbefore is mentioned, and also of and from the said sum of pounds directed to be raised for the portions of the younger children of the said [*gentleman*] by the said [*lady*], under the trusts of the same term as aforesaid: AND WHEREAS the said [*lady*] hath taken the request of the said [*gentleman*] into consideration, and being satisfied that the hereditaments proposed to remain charged with the said annual and other sums of money are, exclusively of the hereditaments proposed to be released from the same, abundantly sufficient for securing all the said annual and ohter sums, and that it is desirable that the said proposed arrangement should take effect, hath consented and agreed to comply with such request in manner hereinafter mentioned; AND WHEREAS the said [*gentleman*] and [*lady*] have represented their views and wishes, in regard to the said proposed arrangement, to the said [*trustees of the said term of ninety-nine years*], and the said [*trustees of the said term of fifteen hundred years*], and have requested their respective concurrence in the

that the gentleman is desirous of raising money by sale or mortgage of part of the settled estate;

and has applied to the lady to join in releasing such part from her pin-money, jointure rent-charge, &c.

and that she, being satisfied with the security of the remaining estates, has agreed to do so;

and that the trustees of the term of 99 years and 1500 years, have agreed to concur in the arrangement, as after expressed.

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said arrangement, in manner hereinafter mentioned; with which request they the said [*trustees of both terms*] have respectively agreed to comply. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and for or towards carrying the same into effect, HE the said [*gentleman*] doth hereby for himself, his heirs, executors, and administrators, and also for the said [*lady*] his wife (she hereby consenting thereto) COVENANT, promise and agree with and to the said [*intended trustees of the said rent charge of one thousand pounds*] their heirs and assigns, that they the said [*gentleman*] and [*lady*] shall and will as of term now last past, or in or as of term next, or some other subsequent term, acknowledge and levy in due form of law before his Majesty's justices of the court of Common Pleas at Westminster, unto the said [*intended trustees of the said rent charge of one thousand pounds*] and the heirs of one of them, one or more fine or fines "*sur conuzance de droit come ceo, &c.*" of the said annual sum or yearly rent charge of one thousand pounds, which by the said hereinbefore recited indenture of release was limited *To the use of* the said [*lady*] and her assigns for her life for her jointure, as hereinbefore is mentioned, by such a description and certainty as will effectually ascertain and pass the same. AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that the fine so as aforesaid, or at any other time or in any other manner to be levied of the said annual sum or yearly rent charge of pounds, between or by the said parties to these presents or any of them, shall operate and enure *To the use* of the said [*intended trustees of the said rent charge of one thousand pounds*] their heirs and assigns, during the life of the said [*lady*], upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same (that is to say); Upon trust, that the said [*last mentioned trustees*] and the survivor of them, and the heirs and assigns of such survivor, do and shall absolutely forbear from claiming, demanding, or enforcing the

First witnessing part. The Gentleman covenants that he and the lady will levy a fine of the rent-charge of 1000*l.* to trustees.

Declaration that such fine shall enure,

To the use of the trustees, upon the trusts following: *viz.*

to forbear from claiming payment of the rent out of the lands after described and demised,

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payment of the said annual sum or yearly rent of one thousand pounds, or any part thereof, out of or from the said closes, or pieces or parcels of land and hereditaments hereinafter described and intended to be hereby bargained, sold, and demised, and their appurtenances, or any part of the same; and do and shall claim, demand, and enforce the payment of the said annual sum or yearly rent, and every part thereof, when and as the accruing payments of the same shall hereafter become due and payable, out of or from such and so many, or such part or parts of the said hereditaments and premises, charged with the same annual sum or yearly rent as aforesaid, as are not hereinafter described, and intended to be hereby bargained, sold, and demised, and their appurtenances: *And* upon this further trust, that the said [*last mentioned trustees*], or the survivor of them, or the heirs or assigns of such survivor, do and shall, with and out of the said annual sum or yearly rent of one thousand pounds, for ever save, defend, and keep harmless and indemnified the person or persons for the time being seised of or entitled to such of the said hereditaments and premises, charged with or liable to the payment thereof, as are hereinafter described and intended to be hereby bargained, sold, and demised, of, from, and against the said sum of five hundred pounds, which is raiseable for the said [*lady*] in the event of her surviving the said [*gentleman*] under the trusts of the said term of one thousand five hundred years, created by the said hereinbefore recited indenture of release as aforesaid, and of, from, and against the interest which may hereafter become payable for the same, and of, from, and against all claims and demands whatsoever, for or on account of the same respectively; *And* upon this further trust, that the said [*last mentioned trustees*], or the survivor of them, or the heirs or assigns of such survivor, do and shall, with and out of the said annual sum or yearly rent of one thousand pounds, pay to and reimburse themselves and himself all costs, charges, and expenses whatsoever, which they or he respectively shall or may pay, incur, expend, or be put unto in or about the execution of the trusts hereinbefore declared of and concerning the same annual sum or yearly rent; *And* do and shall render and pay the residue of the

and to claim and enforce payment thereof out of the other hereditaments charged therewith.

to pay and retain all costs, &c.

and to pay the residue to the lady.

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said annual sum or yearly rent of one thousand pounds, or so much and such part or parts thereof as shall remain after answering the trusts and purposes aforesaid, to the said [*lady*], her executors, administrators, or assigns, for her and their own use and benefit. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for further carrying the same into effect; *And* in consideration of the sum of ten shillings, &c. (the receipt, &c.) *He* the said [*gentleman*] *Hath* granted, bargained, sold and demised; *And* by these presents *Doth* grant, bargain, sell and demise unto the said [*trustee of the fifth part*] his executors, administrators, and assigns, ALL THAT close or piece or parcel of land, situate, &c. And also, all those three several closes or pieces or parcels of land, situate, &c. (*parcels*); TO HAVE AND TO HOLD the said closes, or pieces or parcels of land, hereditaments, and all and singular other the premises hereby bargained, sold, and demised, or intended so to be, and their appurtenances, unto the said [*trustee of the fifth part*] his executors, administrators, and assigns, for and during the several terms of years hereinafter mentioned (that is to say); for and during and unto the full end and term of one hundred and fifty years, to be computed from the day next before the day of the date of these presents, if the said [*gentleman*] shall so long live; and in case there shall happen to be a default or failure of issue male of the said [*gentleman*] by the said [*lady*], entitled or inheritable under the limitations contained in the said hereinbefore recited indenture of release, *Then* for and during, and unto the full end and term of two thousand years, to commence and be computed from the day of the decease of the said [*gentleman*], and such failure of his issue male by the said [*lady*], as hereinbefore is mentioned; but nevertheless as to both of the said last mentioned terms, without impeachment of waste, and upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same (that is to say): *It is hereby agreed and declared* between and by the said parties to these presents, that the said [*trustee of the fifth part*), his executors, administrators, and assigns, shall stand and be possessed of and interested in the said closes or pieces or

Second witnessing part

Gentleman demises unto a trustee the lands intended to be exonerated.

Habendum for the terms of years after mentioned, *viz.* for 150 years from the date of the said indenture, if the gentleman should so long live:

and in case there should be a failure of issue male of the marriage,

then for the term of 2000 years from the death of the gentleman and failure of his issue male,

In trust to dispose of the said terms as the gentleman should appoint; and, in default of appointment, In trust to permit the same to attend the inheritance.

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parcels of land, hereditaments and premises, hereby bargained, sold, and demised, or intended so to be, and their appurtenances, for and during the said several terms of one hundred and fifty years, and two thousand years, hereby respectively created as aforesaid, *Upon trust* to dispose of the same as the said [*gentleman*], by any deed or deeds, or instrument or instruments in writing, to be by him sealed and delivered in the presence of and attested by two or more witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and attested by three or more witnesses, shall from time to time direct or appoint, and in default of and until such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, *In trust*, to permit the same terms respectively to wait upon and attend the respective reversions of the same terms, so as to be in all respects, and for all purposes whatsoever, attendant upon and subservient to the same respectively. Third witnessing part. The trustees of the term of 99 years demise to a trustee

AND THIS INDENTURE ALSO WITNESSETH, that in pursuance, &c. *as before*, p. 188. *And* in consideration of ten shillings, &c. (the receipt, &c.), THEY the said [*trustees of the said term of ninety-nine years*], at the request and upon the nomination of the said [*gentleman*], and with the privity and approbation of the said [*lady*], (testified, &c.), *Have*, and each of them *Hath*, bargained, sold, and demised; *And* by these presents *Do*, and each of them *Doth* bargain, sell, and demise unto the said [*trustee of the fifth part*], his executors, administrators, and assigns, ALL THOSE the said closes, or pieces or parcels of land, hereditaments and premises, hereinbefore described and hereinbefore bargained, sold, and demised as aforesaid, with their and every of their appurtenances, TO HAVE AND TO HOLD the said closes, or pieces or parcels of lands, hereditaments, and all and singular other the premises hereby bargained, sold, and demised, or intended so to be, and their appurtenances, unto the said [*trustee of the fifth part*], his executors, administrators, and assigns, for and during, and unto the full end and term of seventy years, to be computed from the day next before the day of the date of these presents, if both of them the said [*gentleman*] and [*lady*] shall so long live; *But* nevertheless upon and for the same trusts, intents, and purposes,

the premises intended to be exonerated.

Habendum for a term of 70 years, if both gentleman and lady should so long live;

upon the like trusts as are before declared

DEED TO EXONERATE PART OF AN ESTATE INSETTLEMENT FROM PIN-MONEY, &c.

of the term of 150 years.

as are hereinbefore expressed and declared of and concerning the hereinbefore mentioned term of one hundred and fifty years. AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, that the said [*trustees of the said term of ninety-nine years*], their executors, administrators, or assigns, shall stand and be possessed of and interested in such of the said hereditaments and premises comprised in the said term of ninety-nine years, created by the said hereinbefore recited indenture of release as aforesaid, as are not hereinbefore bargained, sold, and demised, and their appurtenances, *Upon* such trusts for raising and paying from and out of the said last mentioned hereditaments and premises, to the said [*lady*], during the joint lives of herself and the said [*gentleman*], the said annual sum of two hundred pounds for her separate use, and by way of pin money, as in the said recited indenture of release are expressed and contained, for the raising and paying the same from and out of the whole of the said hereditaments and premises, comprised in the said term; *It* being the intent and meaning of the said parties hereto, that the said [*lady*] shall not be in any manner prejudiced or affected in respect of the said annual sum of two hundred pounds, by reason or in consequence of the bargain, sale, and demise lastly hereinbefore made; *And* (subject to the aforesaid trust) upon this further trust, that the said [*trustees of the said term of ninety-nine years*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, from time to time, by sale, mortgage, or other disposition of such of the said hereditaments and premises, comprised in the said term of ninety-nine years, as are not hereinbefore bargained, sold, and demised, or by and out of the rents, issues, and profits of the same hereditaments and premises, in the mean time, or by any other reasonable ways and means, save, defend, keep harmless and indemnified, the said [*trustee of the fifth part*], his executors, administrators, and assigns, and the said hereditaments and premises hereinbefore bargained, sold, and demised, and every of them, of, from, and against the payment of the said annual sum of two hundred pounds, and all claims and demands for or upon account of the same, and all costs,

Declaration that the trustees of the term of 99 years shall stand possessed of such of the hereditaments therein comprised as are not intended to be exonerated,

Upon trust thereout to raise and pay the pin-money,

and to indemnify the owners of the hereditaments intended to be exonerated against all claims in respect thereof.

charges, and expenses, to be occasioned by the nonpayment thereof, or otherwise or in reference thereto; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for further carrying the same into effect; *And* in consideration of the sum of ten shillings of, &c. (*the trustees of the term of fifteen hundred years, at the request of the* [*gentleman*], *and with the approbation of the* [*lady*], *demise to the trustee of the fifth part, the said closes, lands and hereditaments, intended to be exonerated,* as in p. 188); TO HAVE AND TO HOLD the said closes, or pieces or parcels of land, hereditaments and premises hereby bargained, sold, and demised, or intended so to be, and their appurtenances, unto the said [*trustee of the fifth part*], his executors, administrators, and assigns, for and during and unto the full end and term of fourteen hundred and ninety-nine years, to be computed from the decease of the said [*gentleman*], and such failure of his issue male by the said [*lady*] as hereinbefore mentioned, without impeachment of waste; *But* nevertheless upon and for such and the same trusts, intents, and purposes as are hereinbefore expressed and declared, of and concerning the said hereinbefore mentioned term of two thousand years. AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, that the said [*trustees of the said term of fifteen hundred years*], their executors, administrators and assigns, shall stand and be possessed of and interested in, such of the said hereditaments and premises comprised in the said term of fifteen hundred years, as are not hereinbefore bargained, sold, and demised, and their appurtenances, *Upon* such trusts, for raising and paying from and out of the said last mentioned hereditaments and premises, to the said [*lady*] or her assigns, during her life, in the event of her surviving the said [*gentleman*], the said annual sum or yearly rent charge of one thousand pounds for her jointure, as in the said recited indenture of release are expressed and contained, for raising and paying the same, from and out of the whole of the said hereditaments and premises, comprised in the said term; *It* being the intent and meaning of the said parties hereto, that the said [*lady*] shall not be in any manner prejudiced or affected

DEED TO EXONERATE PART OF AN ESTATE IN SETTLEMENT FROM PIN-MONEY, &c.

Fourth witnessing part.

The trustees of the term of 1500 years demise to a trustee the lands intended to be exonerated.

Habendum for a term of 1499 years, after the death of gentleman and failure of his issue male;

upon the like trusts as are before declared of the term of 2000 years.

Declaration that the trustees of the term of 1500 years shall stand possessed of such of the hereditaments therein comprised as are not intended to be exonerated,

Upon trust thereout to raise and pay the jointure rent charge,

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and the 500*l.* directed to be raised for the lady, if she should survive the gentleman;

and the portions and maintenance-money directed to be raised for the daughters and younger sons of the marriage,

in respect of the said annual sum or yearly rent charge of one thousand pounds, by reason or in consequence of the bargain, sale, and demise lastly hereinbefore made as aforesaid; *And* (subject to the said last mentioned trust) upon this further trust, that the said [*trustees of the said term of fifteen hundred years*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, by the ways and means in the said hereinbefore recited indenture of release mentioned for that purpose, levy and raise from and out of such of the said hereditaments and premises comprised in the said term of fifteen hundred years, as are not hereinbefore bargained, sold, and demised, the said gross sum of five hundred pounds, eventually provided for the said [*lady*], under the trusts of the said term of fifteen hundred years as aforesaid, and the interest thereof, and also the said sum of pounds, provided under the trusts of the same term, for the portions of the daughters and younger sons of the said [*gentleman*] by the said [*lady*], as hereinbefore is mentioned, and the interest thereof, and the maintenance-money payable for or in respect of the same: *It* being the intent and meaning of the said parties hereto, that the said [*lady*], in respect to the said annual sum or yearly rent charge of one thousand pounds, and the said gross sum of five hundred pounds, and the interest thereof, and her daughters and younger sons by the said [*gentleman*], in respect to the said portions and maintenance money, shall not be in any manner prejudiced or affected by reason or in consequence of the bargain, sale, and demise lastly hereinbefore made as aforesaid; *And* (subject to the trusts aforesaid), Upon this further trust, that they the said [*trustees of the said term of fifteen hundred years*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, &c. (*as ante, p.* 190), save, defend, keep harmless and indemnified the said [*trustee of the fifth part*], his executors, administrators, and assigns, and the said hereditaments and premises hereinbefore bargained, sold, and demised, and every of them, from and against the payment of the said annual sum or yearly rent charge of one thousand pounds so limited *To the use* of the said [*lady*] and her assigns,

and to indemnify the owner of the hereditaments intended to be exonerated against all claims in respect thereof.

during her life for her jointure, as hereinbefore is mentioned, and also of and from the payment to the said [*lady*], her executors, administrators, or assigns, of the said gross sum of five hundred pounds so directed to be raised for her in the like event as aforesaid, and also of and from the payment of the said sums so provided for portions and maintenance, as hereinbefore is mentioned, and all claims and demands for or on account of the same respectively, and all costs, charges, and expenses to be occasioned thereby, or in reference thereto. IN WITNESS, &c.

DEED TO EXONERATE PART OF AN ESTATE IN SETTLEMENT FROM PIN-MONEY, &c.

RELEASE *of a Mortgage Debt, and* RECONVEYANCE *of the Estates in Mortgage.*

RELEASE OF A MORTGAGE DEBT.

THIS INDENTURE, made the day of , BETWEEN [*mortgagee*] of the one part, and [*mortgagor*] of the other part; WHEREAS by indentures of lease and release, bearing date respectively the and days of , the release being made, or expressed to be made between the said [*mortgagor*] of the one part, and the said [*mortgagee*] of the other part; ALL that, &c.(*a*) (*parcels*), were (in consideration of the sum of pounds, by the said [*mortgagor*] to the said [*mortgagee*] paid, as in the said indenture of release is mentioned), conveyed by the said [*mortgagor*] unto, and to the use of the the said [*mortgagee*], his heirs and assigns for ever; *But* subject nevertheless to a proviso or condition, and covenant or agreement for redemption of the said premises on payment, by the said [*mortgagor*], his heirs, executors, ad-

Parties.

Recital of the mortgage.

(*a*) In reconveyances of mortgaged estates, it is most usual to set out the parcels in the recital of the mortgage deed; but sometimes a description of the parcels is introduced in the operative part of the reconveyance, and in those cases the parcels may be referred to in the recital of the mortgage deed, as the 'hereditaments and premises hereinafter described, and intended to be hereby released.'

Reconveyance by endorsment.

RELEASE OF A MORTGAGE DEBT.

ministrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same, after the rate of five pounds for one hundred pounds by the year, on the day of then next ensuing, which said sum and interest were not then paid; *And* in the said indenture of release was contained a covenant on the part of the said [*mortgagor*], for the payment of the said sum of pounds and interest on or at the day or time therein and hereinbefore mentioned for the payment thereof; AND WHEREAS on the day of the said [*mortgagor*] did pay unto the said [*mortgagee*] the sum of pounds, in part satisfaction of the said sum of pounds, so secured by the said hereinbefore recited indentures as aforesaid, as he the said [*mortgagee*] doth hereby admit and acknowledge, and as appears by a receipt for that sum endorsed on the said indenture of release(*b*); AND WHEREAS the said [*mortgagor*] hath this day paid to the said [*mortgagee*], the sum of pounds, in satisfaction and discharge of the like sum so remaining due on the security of the said hereinbefore recited indentures as aforesaid, and also the further sum of pounds, which is now due and owing for, or in respect of interest on the same sum, as he the said [*mortgagee*] doth hereby admit and acknowledge; AND WHEREAS the said [*mortgagee*] hath agreed, at the request of the said [*mortgagor*], to make and execute the release and reconveyance, hereinafter respectively contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, HE the said [*mortgagee*] *Doth* by these presents acquit, release, and for ever discharge the said [*mortgagor*], his heirs, executors, and administrators, and his and their estates and effects whatsoever and wheresoever, and particularly the said messuages or tenements, lands, hereditaments, and premises

of the payment of part of the money;

of the payment of the residue, with interest;

and the assignment to release and reconvey.

First witnessing part. Release of the mortgage debt.

Receipt.

(*b*) A receipt for money secured by a mortgage may be endorsed on the deed, as such an endorsement is not liable to any stamp duty. See the exceptions under the word RECEIPT, in the Schedule to the Stamp Act, 55 Geo. 3. c. 184.

RELEASE OF A MORTGAGE DEBT.

comprised in and conveyed by the said hereinbefore recited indentures as aforesaid and their appurtenances, of and from the said debt or sum of pounds, so secured by the said hereinbefore recited indentures as aforesaid, and the interest thereof and every part thereof respectively, and of and from all actions, suits, claims, and demands whatsoever for or on account of the same, or in any wise relating thereto(*c*); AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*mortgagor*] to the said [*mortgagee*] paid, at or before the sealing and delivering of these presents (the receipt, &c.), HE the said [*mortgagee*] *Doth* by these presents bargain, sell, and release unto the said [*mortgagor*], (*in his actual possession, &c. reference to the lease for a year*), and his heirs, ALL THOSE the said messuages or tenements, lands, hereditaments, and premises comprised in and conveyed by the said hereinbefore recited indentures as aforesaid, with their and every of their appurtenances, *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby released, or intended so to be, and every part thereof, with their appurtenances, unto the said [*mortgagor*] and his heirs, *To the use* of him the said [*mortgagor*], his heirs and assigns for ever, absolutely freed and discharged of and from the said debt or sum of pounds, and interest, so secured by the said hereinbefore recited indentures as aforesaid, and all claims and demands whatsoever for, or on account of the same; AND the said [*mortgagee*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT and declare with and to the said [*mortgagee*], his heirs, executors, administrators, and assigns, that he the said [*mortgagee*] hath not at any time heretofore made, done, committed or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said debt or sum of

Second witnessing part.

Reconveyance of the estates in mortgage.

Covenant from mortgagee that he has done no act to incumber.

(*c*) This first witnessing part is often omitted. The acknowledgment of the payment of the money, and the reconveyance, are all that is necessary.

RELEASE OF A MORTGAGE DEBT.

pounds and interest, messuages or tenements, lands, hereditaments and premises, hereby respectively released, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in any wise assigned, charged, affected, or incumbered(*d*). IN WITNESS, &c.

RELEASE OF AN ESTATE FROM PORTIONS.

RELEASE *of an Estate from a Sum of Money charged thereon, for* PORTIONS *for Younger Children under a Settlement—the Portions being paid; and Merger of the Term of Years created for raising the Portions.*

THIS INDENTURE, made the day of ,

Parties.

BETWEEN [*one releasor*] of, &c. [*another releasor*] of, &c. and [*a third releasor*] of, &c. of the first part; [*owner of the estate*] of, &c. of the second part; and [*trustees of the term of twelve hundred years after mentioned*] of, &c.

Recital of the settlement.

of the third part. *Recite indentures of lease and release, whereby the premises (setting out the parcels in the recital) were, in consideration of an intended marriage between gentleman and lady, and other the considerations in the release mentioned, conveyed* To the following uses, *viz.: after the solemnization of the marriage,* To the use *of trustees for ninety-nine years, if* [gentleman] *and* [lady] *should jointly so long live,* In trust, *to raise pin money for the* [lady], *with remainder* To the use *of the* [gentleman], *for his life; with a limitation* To the use *of trustees and their heirs, during the life of the said* [gentleman], In trust *to preserve contingent remainders, with remainder* To the use and intent *that the* [lady] *might receive during her life a rent charge for her jointure, with the*

(*d*) To save expense, and to guard against the difficulty which would arise from the loss of the release and reconveyance, it is frequently the practice to take the release and reconveyance endorsement on the mortgage deed. The above form may be easily altered to a release and reconveyance by endorsement, when such is the wish of the parties. See note, *ante*, p. 161.

RELEASE OF AN ESTATE FROM PORTIONS.

usual powers of distress, &c. and subject thereto, To the use *of the said* [trustees for the term of twelve hundred years], *for the term of twelve hundred years, to be computed from the decease of the said* [gentleman], In trust *to secure the jointure rent charge, and raise the sum of pounds, for the portions of the younger children of the marriage; to be paid and divided in such shares and manner as the said* [gentleman] *and* [lady] *should, by deed, jointly appoint; and in default of such appointment, amongst the said younger children, equally; the shares of the sons to be vested, on their attaining the age of twenty one-years; and the shares of the daughters to be vested, on their attaining that age, or marrying under that age with the consent of their parents, or guardians for the time being, and to be respectively paid upon their becoming vested, or on the death of the* [husband], *which ever event should last happen; and subject to the said term of twelve hundred years, and to the trusts thereof,* To the use *of the first and every other son of the said* [gentleman] *by the said* [lady], *severally and successively in tail male, with divers remainders over;* (*a*) AND WHEREAS a marriage was duly had and solemnized between the said [*gentleman*] and [*lady*], at the parish church of aforesaid, on the day next after the day of the date of the said indenture of release. AND WHEREAS the said [*lady*] departed this life on or about the day of leaving the said [*gentleman*], her husband, and four children by him her surviving; namely, the said [*owner*] and [*releasors*], and without having exercised the power of appointment so given to her and the said [*gentleman*] by the said hereinbefore recited indenture of release as aforesaid; AND WHEREAS by an indenture of bargain and sale, bearing date the day of , and made, or expressed to be made, between the said [*gentleman*] of the first part; the said [*owner*] of the second part; [X. Y.] of, &c. of the third part; and [Y. Z.] of, &c. of the fourth part; and duly enrolled in his Majesty's

of the marriage;

of the death of the lady, leaving gentleman and four children;

of the bargain and sale, and recovery, whereby the eldest son's estate tail was barred;

(*a*) For recitals of settlements, see Index, RECITAL; and for the usual trusts for raising portions out of real estate, see Index, TRUSTS, PORTIONS.

RELEASE OF AN ESTATE FROM PORTIONS.

High Court of Chancery, on or about the day of ; *And* by a common recovery duly suffered in his Majesty's Court of Common Pleas at Westminster, in Term, in the year of the reign of his present Majesty, pursuant to a covenant or agreement for that purpose in the said indenture of bargain and sale contained; in which common recovery the said [Y. Z.] was demandant, the said [X. Y.] tenant, the said [*gentleman*] first vouchee, and the said [*owner*] second vouchee, who vouched over the common vouchee of the said Court of Common Pleas; the said messuages or tenements, lands hereditaments and premises hereinbefore described, and comprised in and conveyed by the said hereinbefore recited indentures as aforesaid, and their appurtenances, were discharged from all estates tail therein, of the said [*owner*], and all remainders, reversions, and limitations over, expectant or depending thereupon, and were assured and limited *To the use* of such person or persons, for such estate or estates, upon such trusts, and in such manner as the said [*gentleman*] and [*owner*] should, by any deed or deeds, or instrument or instruments in writing, to be by both of them executed, as in the said indenture of bargain and sale is mentioned, jointly direct or appoint; *And* in default of such direction or appointment, *And* subject thereto, *To the use* of the said [*gentleman*] and his assigns, during his life, without impeachment of waste, with remainder *To the use* of the said [*owner*], his heirs and assigns for ever; AND WHEREAS the said [*gentleman*] departed this life in or about the month of , now last past, AND WHEREAS the said [*releasors*] have severally attained their ages of twenty-one years; *And* having occasion for their respective shares in the said sum of pounds, so directed to be raised for their portions, under the trusts of the hereinbefore mentioned term of twelve hundred years as aforesaid, lately applied to the said [*owner*] for payment of the same with interest thereon, from the time of the decease of the said [*gentleman*]; AND WHEREAS the said [*owner*] hath this day, in compliance with such application as aforesaid, paid to the said [*releasors*], in equal shares and proportions, a sum of pounds, of lawful money of Great Britain, in

and the premises limited to the joint appointment of gentleman and son;

and in default thereof, to gentleman, for life, remainder to his son in fee.

that the younger children have attained twenty-one, and applied for their portions;

satisfaction and discharge of the like sum so directed to be raised for their portions, as hereinbefore is mentioned, and also a further sum of pounds of like money, in satisfaction and discharge of the interest which hath become due for the said portion-money, or sum of pounds since the decease of the said [*genteman*], as they the said [*releasors*] do hereby respectively admit and acknowledge; AND WHEREAS the said [*releasors*] have agreed, at the request of the said [*owner*], to execute the release hereinafter contained; *And* the said [*trustees of the term of twelve hundred years*] have agreed, at the like request, and with the privity and approbation of the said [*releasors*], to assign and surrender the said term of twelve hundred years, in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement in this behalf, and in consideration of the payments so this day made by the said [*owner*] to the said [*releasors*], as hereinbefore is mentioned and recited, THEY the said [*releasors*] *Have*, and each and every of them *Hath* acquitted, released, exonerated, and for ever discharged, *And* by these presents *Do*, and each and every of them *Doth* acquit, release, exonerate, and for ever discharge, ALL and singular the said messuages or tenements, lands, hereditaments, and premises, hereinbefore described and comprised in and conveyed by the said recited indentures of the and days of , as aforesaid, and their appurtenances; *And* also the said [*owner*], his heirs and assigns, and the said [*trustees of the said term of twelve hundred years*], as such [trustees] of the hereinbefore mentioned term of twelve hundred years as aforesaid of and from the said principal sum of pounds, so directed or provided to be raised under the trusts of the said term of twelve hundred years as aforesaid, and of and from all interest which hath become due and payable for or in repect of the same, and of and from all actions, suits, remedies, claims, and demands whatsoever for or on account of the same, or in anywise relating thereto, (*Covenants from the* [*releasors*], *so far as relates to their own acts, that they have not done any act, whereby the said principal sum of pounds, interest, and premises hereby released, or intended so to be, are incumbered, or*

RELEASE OF AN ESTATE FROM PORTIONS.

that the portions have been paid, and the younger children have agreed to release.

First witnessing part. The parties entitled to portions release the estates from the sum charged thereon for portions

RELEASE OF AN ESTATE FROM PORTIONS.

Second witnessing part. The trustees of other term of 1200 years assign it to merge.

the [releasors] are prevented from making the release hereinbefore contained; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreements in this behalf, and for the considerations hereinbefore mentioned; *And* also in consideration of the sum of ten shillings of, &c. by the said [*owner*] to the said [*trustees of the term of twelve hundred years*], paid at, &c. (the receipt, &c.) THEY the said [*trustees*], at the request and by the direction, and upon the acceptance of the said [*owner*], and with the privity and the approbation of the said [*releasors*], (testified, &c.), *Have*, and each of them *Hath* bargained, sold, assigned, and surrendered, *And* by these presents *Do*, and each of them *Doth* bargain, sell, assign, and surrender unto the said [*owner*] and his heirs, ALL and singular the said messuages or tenements, lands, hereditaments, and premises, hereinbefore described, and so comprised in the said term of one thousand and two hundred years, created by the said hereinbefore recited indenture of release as aforesaid, and their appurtenances, *And* all the estate, &c. TO THE END and intent that the residue and remainder of the said term of twelve hundred years, may from henceforth become merged and extinguished in the reversion, freehold, and inheritance of the said messuages or tenements, lands, hereditaments, and premises, therein comprised, and hereby assigned and surrendered, or intended so to be, and their appurtenances. (*Covenant from the trustees of the term that they have done no act to incumber*, as ante, p. 169). IN WITNESS, &c.

RELEASE OF PART OF AN ESTATE FROM A SUM OF MONEY CHARGED THEREON FOR PORTIONS, &c.

RELEASE *of Part of an Estate comprised in a Settlement, from a Sum of Money charged thereon for* PORTIONS, *by a former Settlement, and* ASSIGNMENT *of the Part so released to a Trustee for the Remainder of the Term of Years created therein for raising such Portions, in Trust to attend the Inheritance: The Release being given to facilitate an intended Sale of the Premises, under a Power of Sale contained in the last Settlement.*

THIS INDENTURE, made the day of , BETWEEN [*one releasor*] of, &c. [*another releasor*] of, &c. [*a third releasor*] of, &c. and [*a fourth releasor*] of, &c. of the first part; [*tenant for life*] of, &c. of the second part; [*surviving trustee of the power of sale*] of, &c. of the third part; [*trustees of the term of twelve hundred years after mentioned*] of, &c. of the fourth part; and [*assignee of that term*] of, &c. of the fifth part. WHEREAS by indentures of lease and release, bearing date respectively the and days of , and made, &c. The messuages or tenements, lands, hereditaments, and premises particularly described and set forth in the schedule hereunder written, or hereunto annexed, and their appurtenances, were (amongst and together with divers other hereditaments, and for the considerations in the said indenture of release mentioned,) conveyed by [*father of tenant for life*], *To* the uses, &c. in the said indenture of release declared concerning the same, and in part hereinafter mentioned (that is to say), *To the use*, &c. (*set out the uses, the same being similar to those mentioned in pages* 196 *and* 197; *then recite the death of the* [mother of tenant for life], *leaving her husband and five children by him her surviving*, viz. *the said* [tenant for life] *and* [releasors]; *then recite a bargain and sale, and recovery, as in pages* 197, 198); AND WHEREAS by indentures of lease and appointment, and release, bearing date respectively the and days of , the appointment

Parties.

Recital of the first settlement.

The bargain and sale, and recovery.

The last settlement.

RELEASE OF PART OF AN ESTATE FROM A SUM OF MONEY CHARGED THEREON FOR PORTIONS, &c.

and release being made, or expressed to be made, between the said [*father of tenant for life*] of the first part, the said [*tenant for life*] of the second part; [*intended wife of tenant for life*] of, &c. of the third part; [A. B.] and [C. D.] therein respectively described, of the fourth part; and [E. F.] therein described, and the said [*surviving trustee of the power of sale*] of the fifth part; the said messuages or tenements, lands, hereditaments, and premises comprised in and conveyed by the said hereinbefore recited indenture of bargain and sale, and the common recovery suffered in pursuance thereof as aforesaid, and their appurtenances, were (in consideration of a marriage then intended and shortly afterwards solemnized between the said [*tenant for life*] and [*intended wife of tenant for life*], and for other the considerations in the said indenture of appointment and release mentioned,) appointed and conveyed by the said [*father of tenant for life*] and [*tenant for life*], (subject and without prejudice to the said term of twelve hundred years, so limited to the said [*trustees of the said term of twelve hundred years*], their executors, administrators, and assigns, by the said therein and hereinbefore recited indenture of release of the day of as aforesaid, and the trusts by the same indenture declared of the said term, for raising the said sum of pounds for portions for the said [*releasors*] as hereinbefore is mentioned,) *To the uses*, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations in the said indenture of appointment and release declared and contained concerning the same, and hereinafter in part mentioned (that is to say), *To the use and intent that the said* [*father of the tenant for life*] *might receive thereout, during his life, a yearly rent charge of pounds, with the usual powers for recovering the same, and subject thereto; To the use of the said* [A. B.] *and* [C. D.], *for one hundred and twenty years, upon trusts for raising the said yearly rent*, as in p. 183; *And* from and after the expiration or sooner determination of the said term of one hundred and twenty years, *And* in the mean time subject thereto, and to the trusts thereof, *To the use* of the said [*tenant for life*] and his assigns for his life, without impeachment for waste, with a li-

RELEASE PART OF AN ESTATE FROM A SUM OF MONEY CHARGED THEREON FOR PORTIONS, &c.

mitation *To the uses* of the said [E. F.], and [*surviving trustee of the power of sale*], and their heirs, during the life of the said [*tenant for life*], *In trust* for him the said [*tenant for life*], and his assigns, and by the usual ways and means to preserve the contingent remainders thereinafter limited from being defeated or destroyed, with divers remainders over; *And* by the said indenture of appointment and release, it was declared, &c. *setting out shortly the power enabling the trustees to preserve contingent remainders, and the survivor, &c. to sell and exchange the said hereditaments and premises, with the consent of the said [tenant for life]; And for that purpose, to revoke the uses thereinbefore declared, and appoint new uses*(*a*). AND WHEREAS the said [*father of tenant for life*] departed this life on or about the day of ; AND WHEREAS the said [E. F.] departed this life on or about the day of , now last past; AND WHEREAS the said [*surviving trustee of the said power of sale*] hath, under or by virtue of the said power of sale contained in the said lastly hereinbefore recited indenture as aforesaid, with the consent of the said [*tenant for life*] offered, or proposed to sell, or intends forthwith to offer or propose to sell the several messuages or tenements, lands, hereditaments and premises, particularly described, had set forth in the said schedule hereunder written, or hereunto annexed; AND WHEREAS in order to facilitate such intended sale, the said [*releasors*] have respectively agreed, at the request of the said [*tenant for life*], and [*surviving trustee of the power of sale*], to release the said messuages or tenements, lands, hereditaments and premises, so intended to be sold, as aforesaid, and their appurtenances, from their respective portions, and all interest thereof, and all claims and demands for or on account of the same,—being fully satisfied, that the estates which will still remain liable to the payment of the same portions, are an ample security for the same(*b*); AND WHEREAS the said

The death of the father of tenant for life, and of one of the trustees for sale;

the intended sale, and the agreement by the parties entitled to the portions, to release the lands intended to be sold.

(*a*) For the usual power of sale and exchange, in settlements, see Index, SETTLEMENTS.

(*b*) To this recital the following is sometimes added:

"and that the monies produced, and to be produced by the sale

RELEASE OF PART OF AN ESTATE FROM A SUM OF MONEY CHARGED THEREON FOR PORTIONS, &c.

[*trustees of the said term of twelve hundred years*], have agreed, at the request of the said [*releasors*], and by the direction, and upon the nomination of the said [*tenant for life*] and [*surviving trustee of the power of sale*], to assign the hereinbefore mentioned term of twelve hundred years in the said messuages or tenements, lands, hereditaments and premises, particularly described and set forth in the said schedule hereunder written, or hereunto annexed, and which are hereinafter released, or intended so to be, to the said [*assignee*], his executors, administrators, and assigns, *In trust,* and to the intent that the same may attend the inheritance of the same premises, and may be assigned and disposed of as the purchasers of the same shall direct or require. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and for the considerations and purposes hereinbefore mentioned, THEY the said [*releasors*], at the request and by the direction of [*tenant for life*], and [*surviving trustee of the power of sale*], (testified by their respectively being parties to the sealing and delivering these presents), *Have,* and every of them *Hath* released, acquitted, exonerated, and for ever discharged, *And* by these presents *Do,* and every of them *Doth* release, acquit, exonerate, and for ever discharge, ALL and singular the said several messuages or tenements, lands, hereditaments and premises, particularly described and set forth in the said schedule hereunder written, or hereunto annexed, and every of them, and every part thereof, and their and every of their appurtenances, of and from the said principal sum of pounds, provided to be raised under the trusts of the hereinbefore mentioned term of twelve hundred years as aforesaid, and of and from all interest and maintenance money, raisable under the trusts of the same term, as hereinbefore is mentioned, and of and from all actions,

and the agreement of the trustee of the term to assign it.

First witnessing part. The parties entitled to the portions release the premises intended to be sold therefrom.

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of the said hereditaments, will be laid out in the purchase of other real estates, to be settled as directed by the said hereinbefore recited indenture of settlement, and that such real estates when so purchased, and also the purchase monies for the same, in the mean time, and until the application thereof, in the manner hereinbefore mentioned, will continue liable to the payment of the said portions;"

RELEASE OF PART OF AN ESTATE FROM A SUM OF MONEY CHARGED THEREON FOR PORTIONS, &c.

suits, remedies, proceedings, claims, and demands whatsoever on account of the same, or in any wise relating thereto; (*Covenant by the said [releasors], that they have done no act, whereby the portions hereby released are incumbered, or they are prevented from making the release*, see ante, p. 158). AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and also in consideration of the sum of ten shillings of lawful money of Great Britain, by the said [*assignee*] to the said [*trustees of the said term of twelve hundred years*] paid, at &c. (the receipt, &c.) THEY the said [*trustees of the said term of twelve hundred years*], at the request and by the direction of the said [*releasors*], and upon the nomination of the said [*tenant for life*] and [*surviving trustee of the power of sale*], (testified, &c.) *Have*, and each of them *Hath* bargained, sold, assigned, and set over, *And* by these presents *Do*, and each of them *Doth* bargain, sell, assign, and set over unto the said [*assignee*], his executors, administrators, and assigns, ALL and singular the said messuages or tenements, lands, hereditaments, and premises particularly described and set forth in the said schedule hereunder written, or hereunto annexed, with their and every of their appurtenances, *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, and their appurtenances, unto the said [*assignee*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of twelve hundred years therein, absolutely freed and discharged of and from all and every the trusts in and by the said hereinbefore recited indenture of release of the day of , expressed and declared concerning the same; *But In trust* nevertheless to be assigned and disposed of in such manner as the said [*surviving trustee of the power of sale*], his executors or administrators, or other the trustee or trustees for the time being of the power of sale and exchange given and contained in the said lastly hereinbefore recited indenture as aforesaid, or any purchaser or purchasers of all or any part of the said hereditaments and

Second witnessing part.

The trustees of the term assign it,

as to the land released,

to a trustee to attend the inheritance.

RELEASE OF PART OF AN ESTATE FROM A SUM OF MONEY CHARGED THEREON FOR PORTIONS, &c.

premises under the said power, or his, her, or their heirs or assigns, or any person or persons lawfully claiming, or to claim by, from, through, under, or in trust for him, her, or them, or any of them shall, from time to time, order or direct; *And* in the mean time, *In trust* to permit and suffer the said term of twelve hundred years to wait upon and attend the reversion, freehold, and inheritance of and in the said messuages or tenements, lands, hereditaments, and premises hereby assigned, or intended so to be, and their appurtenances, in order to protect the same from and against all intermediate charges and incumbrances (if any such there be). (*Covenant from the said* [trustees of the said term of twelve hundred years] *that they have done no act whereby the premises hereby assigned are incumbered.*) IN WITNESS, &c.

RELEASE OF A LEGACY.

RELEASE *by a Legatee to an Executor, of a Legacy, given to the Legatee, during her Minority, and of the Accumulations which had been made thereof during the Minority; and Covenant of Indemnity from the Legatee and a Third Party, against any Claim which should be made upon the Executor, by reason of such Payment.*

THIS INDENTURE, made the day of ,

Parties.

BETWEEN [*releasor*], now residing with her uncle [Sir A. J.] of, &c. bart., of the first part; the said [Sir H. J.] of the second part; and [*releasee*], of the third part:

Recites the will by which the legacy is given.

WHEREAS [E. S.] late of, &c. widow, duly made and published her last will and testament, in writing, bearing date, &c. and thereby (amongst several other bequests) gave to the said [*releasor*], by the description of her god-daughter [M. G.] daughter of [C. G.] of, &c. the sum of pounds sterling; *And* the said [*testatrix*] gave and bequeathed the residue of her personal estate and effects, in manner in her said will mentioned, and appointed [W. C.] of, &c. and the said [*releasee*] joint executors of her said will;

Death of the testatrix, and

AND WHEREAS the said [E. S.] departed this life in or

RELEASE OF A LEGACY.

about the month of , 18 , without having altered or revoked the said bequest contained in her said will as aforesaid; *And* on the day of , her said will was duly proved by the said [W. C.], and [*releasee*], in the court of . AND WHEREAS the said [W. C.] departed this life on or about the day of . AND WHEREAS at the time of the decease of the said testatrix the said [*releasor*] was an infant under the age of twenty-one years, and the said [*releasee*], in order to secure the payment of the said legacy of pounds to the said [*releasor*], on her coming of age, invested the amount thereof in the three per cent consolidated bank annuities; and hath since invested the dividends which have from time to time accrued thereon, in the purchase of like annuities, and hath thereby increased the amount thereof to the sum of pounds, like annuities. AND WHEREAS the said [*releasor*] attained her age of twenty-one years, on the day of now last past, and soon after applied to and requested the said [*releasee*] to sell the said sum of pounds, three per cent consolidated bank annuities, and to pay her the produce thereof, in discharge of the said legacy and the accumulations thereof, after deducting thereout the legacy duty payable for the said legacy. AND WHEREAS the said [*releasee*], in compliance with such application and request as aforesaid, did, on the day of , sell the said sum of pounds, three per cent. consolidated bank annuities, and the same produced the sum of pounds of lawful money of Great Britain. AND WHEREAS, the said [*releasee*], hath, by and out of the said sum of pounds, paid and discharged the legacy duty for the said legacy or sum of pounds, so given and bequeathed to the said [*releasor*] as aforesaid, amounting to the sum of pounds, which sum deducted from the said sum of pounds, leaves the sum of pounds. AND WHEREAS doubts (*a*) are entertained by the said [*releasee*] of the right of the said [*releasor*] to the whole of the said sum of pounds; but he hath nevertheless consented and

probate of her will.

Death of one of the executors;

that legatee was an infant.

The investment by the surviving executor of the legacy in the funds, and the accumulation of the dividends thereon;

that the infant lately attained 21, and applied for transfer of the aforesaid annuities;

that the executor has, in compliance with such application, sold the annuities and paid the legacy duty; and that the residue of the money amounts to ——*l.*;

that the executor doubts the right of the legatee to the

(*a*) When doubts are referred to, it is generally advisable to state their nature, if not the grounds of them.

RELEASE OF A LEGACY.

whole of this sum, but will pay it to her on being released and indemnified;
and that executor has accordingly paid such sum to the legatee.

agreed to pay her the same, upon having such release as hereinafter contained, and upon being indemnified by the said [*releasor*] and [Sir H. J.], in manner hereinafter mentioned, which release and indemnity the said [*releasor*] and [Sir H. J.] have respectively agreed to give; AND WHEREAS, in pursuance and part performance of the said agreement, the said [*releasee*] hath this day paid to the said [*releasor*] the said sum of pounds of lawful money of Great Britain, being the residue of the said sum of pounds, so produced by such sale as aforesaid, after deducting the legacy duty or sum of pounds, hereinbefore mentioned, as she the said [*releasor*] doth hereby admit and acknowledge. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, SHE the said [*releasor*] *Hath* remised, released, acquitted, and for ever discharged, *And* by these presents *Doth* remise, release, acquit, and for ever discharge, the said [*releasee*], his heirs, executors, and administrators, and his and their estate and effects whatsoever and wheresoever, and also the estate and effects of the said [E. S.], of and from the said legacy or sum of pounds, so given and bequeathed to the said [*releasor*], as hereinbefore is mentioned, and every part thereof, and the interest which hath become due and payable in respect thereof, and all accumulations which have been made of the same, and the stocks or funds in or upon which the said legacy or sum has been invested as aforesaid, and the dividends and annual produce thereof; *And* of and from all actions, suits, claims, and demands whatsoever, for or on account of the said legacy, or sum, interest, accumulations, stocks, funds, dividends, and annual produce, or any of them, or any part thereof, or for or on account of any matter or thing in anywise relating thereto. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, THEY the said [*releasor*] and [Sir H. J.], do hereby jointly for themselves their heirs, executors, and administrators, and each of them doth hereby separately for herself, and himself, and her and his heirs, executors, and administrators, COVENANT,

First witnessing part.

The legatee releases the executor from the legacy, and all claims on account thereof.

Second witnessing part.

Legatee and Sir H. J. covenant to indemnify the executor against all claims by reason of his having made the thereinbefore

RELEASE OF A LEGACY.

recited payment.

promise, and agree with and to the said [*releasee*], his executors, administrators, and assigns, that they the said [*releasor*] and [Sir H. J.], or one of them, their, or one of their heirs, executors, or administrators, shall and will, from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, the said [*releasee*], his heirs, executors, and administrators, and his and their estates and effects whatsoever and wheresoever, of and from all actions, suits, losses, damages, costs, charges, and expenses whatsoever, which he the said [*releasee*], his heirs, executors, or administrators, or any of them, shall or may be involved in, incur, sustain, or be put unto, for, or by reason, or in consequence of the said [*releasee*] having paid to the said [*releasor*] the whole of the said sum of pounds, as hereinbefore is mentioned, or for or by reason of any matter, cause, or thing, in anywise relating thereto. IN WITNESS, &c.

RELEASE OF A LEGACY.

RELEASE *to the Trustee and Executor of a Will, of a* LEGACY *bequeathed In Trust for a Lady for Life, with remainder to her Children equally; the Share of one of the Children having been assigned to Another in the Mother's Lifetime* (by Deed Poll.)

TO ALL TO WHOM THESE PRESENTS SHALL COME [A.], of, &c. [B.]. of, &c. [C.], of, &c. [D.] of, &c. and his wife, and [E.], of, &c. and his wife, SEND GREETING. WHEREAS [H. T.], late of, &c. gentleman, duly signed and published his last will and testament in writing, bearing date the day of , and thereby (amongst other things) gave and bequeathed unto [*releasee*], his executors, administrators and assigns, the sum of pounds of lawful money of Great Britain, *Upon trust*, that he or they should lay out and invest the same in his or their name or names, in the parliamentary stocks or public funds of Great Britain, or at interest on government securities or real securities, in England

Recite the will by which the legacy is given;

RELEASE OF A LEGACY.

or Wales, with full power for him or them during the continuance of the trusts thereinafter declared thereof, to alter and vary the said stocks, funds, and securities for or into other stocks, funds and securities of a like nature, as he or they should think fit; *And upon further trust,* that he or they should pay the interest, dividends, and annual produce of the said sum of pounds, so to be invested as aforesaid, and the stocks, funds, and securities in or upon which the same should be invested unto, or permit and authorise the same to be received by his (the said testator's) niece [M.], or her assigns, during her life, as and when the same should become payable, and should immediately after the decease of the said [M.] pay, assign, or transfer the said trust monies, stocks, funds, and securities, unto and amongst the said [A.], [B.], [C.], the wife of the said [D.] (then spinster), and the wife of the said [E.] (then spinster), their respective executors, administrators, or assigns, in equal shares, as tenants in common; *And* the said testator appointed the said [*releasee*] sole executor of his said will; (*Recite the death of the testator, and probate of his will, as ante, p.* 207]. AND WHEREAS, by an indenture of assignment bearing date the day of , and made or expressed to be made between the said [C.], of the one part; and the said [A.], of the other part; the said [C.] did (for the considerations therein mentioned) assign unto the said [A.], his executors, administrators, and assigns, the said one equal fifth part or share of him the said [C.], of and in the said legacy or sum of so given and bequeathed by the said will of the said [H. T.], in trust for the said [M.], and her children as hereinbefore is mentioned, and the stocks, funds, and securities, in or upon which the same should in pursuance of the trust or power in that behalf contained in the said will, be invested; and the interest, dividends, and annual produce thereof: *To hold* the same (subject and without prejudice to the life-interest therein of the said [M.] unto the said [A.], his executors, administrators, and assigns, for his and their own use and benefit, and as and for his and their own proper monies and effects, together with all the powers and authorities of him the said [C.] to demand, recover,

an assignment from one of the sons to his eldest brother of his fifth part in the legacy, subject to the mother's life interest;

RELEASE OF A LEGACY.

receive and give effectual receipts or discharges for the same. And whereas in order to satisfy the said legacy or sum of pounds, so given and bequeathed by the said recited will of the said [H. T.], in trust for the said [M.] and her children, as hereinbefore is mentioned, the said [*releasee*] did soon after the decease of the said [H. T.] raise out of his personal estate and effects the sum of pounds of lawful money of Great Britain; and with the sum of pounds (part of the said sum of pounds) did pay the duty, to the payment of which the said legatees were subject, in respect of the said legacy; and with the sum of pounds (other part of the said sum of pounds) did purchase in his name the sum of pounds, three pounds ten shillings per centum reduced bank annuities, transferable at the Bank of England, and with the sum of pounds (the remainder of the said sum of pounds) did pay the broker's commission for the said purchase, and some incidental expenses. And whereas the said [M.] departed this life on or about the day of now last past: And whereas all the dividends of the hereinbefore mentioned sum of pounds, three pounds ten shillings per centum reduced bank annuities, which became payable during the life of the said [M.] were duly received by her, as appears from her receipts in that behalf contained in the books of the governor and company of the Bank of England. And whereas the said [*releasee*] did on or about the day of now last past, upon the application and request of the said [A.], [B.], [C.], and [D.] and his wife, sell and dispose of the sum of pounds, three pounds ten shillings per cent. reduced bank annuities, (being four equal fifth parts or shares of the hereinbefore mentioned sum of pounds like annuities), and did at the same time, out of the produce of such sale, pay the broker's commission for effecting the said sale, and some other expenses attending the same, and did immediately thereafter, with the consent and approbation of the said [C.] and the wife of the said [D.], pay and divide the residue of such produce (amounting to the sum of pounds), unto and between the said [A.], [B.] and [D.], in manner following (that is to say); the sum of pounds (being two equal

the appropriation and investment of the legacy, after payment of legacy duty;

the death of the mother: and payment to her in her life-time, of all dividends on the trust funds,

the sale of four-fifths of the trust fund, and payment of the produce to the four eldest children;

RELEASE OF A LEGACY.

fourth parts of the said sum of pounds) unto the said [A.]; the sum of pounds (being one other equal fourth part of the said sum of pounds) unto said [B.]; and the sum of pounds, (being the other equal fourth part of the said sum of pounds), unto the the said [D.], as they the said [A.], [B.], [C.], and [D.], and , his wife, do hereby respectively testify, admit and acknowledge. AND WHEREAS the said the wife of the said [E.] attained her age of twenty-one years on the day of now last past: AND WHEREAS the said [*releasee*] hath this day, with the privity and appropation of the said the wife of the said [E.], (testified by her execution of these presents), transferred into the name of the said [E.] in the said books of the Governor and Company of the Bank of England, the sum of pounds, three pounds ten shillings per cent. reduced bank annuities, (being the remainder of the said sum of pounds like annuities so purchased by the said [*releasee*] as hereinbefore is mentioned, and being one equal fifth part or share of that sum), as they the said [E.] and his wife do hereby respectively admit and acknowledge: AND WHEREAS the said [*releasee*] hath also this day paid to the said [E.] and his wife, or one of them, all the dividends which since the decease of the said [M.], have been received for or in respect of the said sum of pounds, three pounds ten shillings per cent. reduced bank annuities so transferred into the name of the said [E.] as aforesaid, as they the said [E.] and his wife do hereby rrspectively admit and acknowledge. AND WHEREAS the said [A.], [B.], [C.] [D.] and his wife, and [E.] and his wife, have agreed, at the request of the said [*releasee*], to execute the release hereinafter contained. NOW KNOW YE, that in consideration of the several payments and transfer so respectively made by the said [*releasee*] as hereinbefore is mentioned *The* said [A.], so far as relates to his share of the said legacy or sum of pounds so given and bequeathed by the said will of the said [H. T.] in trust for the said [M.] and her children as aforesaid, and also so far as relates to the share of the said [C.] of the same legacy or sum, (and which share was by the said recited indenture of the day of assigned to him the said [A.] as herein-

the attainment by the youngest child of her age of twenty-one years, and the transfer to her husband of her one-fifth of the trust fund.

and the agreement to execute a release

Testatum.

The legatees release accordingly.

RELEASE OF LEGACY.

before is mentioned ;) *And* the said [B.] so far as relates to his share of the same legacy or sum ; *And* the said [C.] so far as relates to his said share of the same legacy or sum; *And* the said [D.] and his wife, so far as relates to the share of the said [D.] and his wife, in right of the said of the same legacy or sum ; *And* the said [E.] and his wife, so far as relates to the share of thesaid [E.] and his wife, in right of the said of the same legacy or sum; *Have* and every of them *Hath* acquitted, released, and for ever discharged, *And* by these presents *Do*, and every of them *Doth* acquit, release, and for ever discharge the said [*releasee*], his executors and administrators, and his and their estates and effects whatsoever and wheresoever, and also the estates and effects of the said [H.T.], of and from the said legacy or sum of pounds so given and bequeathed by the said will of the said [H. T.] in trust for the said [M.] and her children as hereinbefore is mentioned, and every part thereof, and of and from the said stocks, funds, or securities in or upon which the same has been laid out and invested as aforesaid ; and also of and from all interest, dividends, and annual produce, which, up to the day of the date of these presents, have become due for or in respect of the said legacy or sum, stocks, funds and securities ; and also of and from all actions, suits, claims, and demands whatsoever, for or in respect of the same legacy or sum, stocks, funds, securities, interest, dividends, and annual produce, or any of them, or any part thereof respectively, or for or in respect of any act, deed, matter, or any thing whatsoever in anywise relating to the same or any of them, or any part thereof respectively. In witness, &c.

RELEASE OF DOWER.

RELEASE *by a* DOWRESS *to Trustees for Sale under a Will, of her* RIGHT *to* DOWER, *in consideration of the Bequest to her of an Annuity in lieu thereof* (*a*).

THIS INDENTURE, made the day of , BETWEEN [*dowress*] of, &c. of the one part; and [*one of the trustees*] of, &c.; and [*the other of the trustees*] of, &c. of the other part; WHEREAS [A.] late of, &c. deceased, by his last will and testament in writing, bearing date on or about the day of , gave, devised, and bequeated ALL his freehold, leasehold, and personal estate and effects whatsoever and wheresoever, unto the said [*trustees*], and to their heirs, executors, administrators, and assigns, upon the trusts and for the intents and purposes therein, and in part hereinafter mentioned (that is to say); *In* the first place, *In trust* to pay all his the said testator's just debts and funeral expenses, and the charges of proving his said will, *And* in the next place to dispose of certain parts of his household goods and household linen, in the manner in the said will mentioned, *And* to pay to his wife the said [*dowress*] the sum of pounds, within one month

Parties.

Recites the will of the husband.

DOWER.

(*a*) On the subject of *dower* generally, see Index, DOWER; and for forms in which a wife is made to join in conveyances for the purpose of extinguishing her right or title to dower, see Index, PARTITION, PURCHASE DEEDS, MORTGAGES, and SETTLEMENTS. A woman, upon her marriage, is said to acquire "a *title* to dower;" after the husband's death, and before the dower is assigned, she has "a *right* to dower;" and after the assignment of her dower, she is said to have "an *estate* in dower." The *title* to dower can only be *extinguished* by fine; the *right* to dower may be *released* by deed; and the *estate* in dower may be *conveyed* by any of the usual modes of conveying estate of freehold. The forms under the present title are applicable only to releases of *rights* to dower.

RELEASE OF DOWER.

after his decease; *And* the said testator declared that it was his will that all his freehold, leasehold, and other property (except the household goods and linen, therein particularly mentioned), should be sold and disposed of by his said [*trustees*] to the best advantage, and that the produce thereof, or so much thereof as should be sufficient, should be laid out and invested by them, upon trust to pay his said wife the said [*dowress*] a clear annual or yearly sum of pounds, by quarterly payments for her life, in lieu of all dower which she could claim out of his freehold estates, and upon the several other trusts in his said will mentioned; *And* the said testator afterwards died without having revoked or altered his said will; *And* the said [*trustees*], the executors therein named, did on or about the day of , duly prove the same will in the court of . AND WHEREAS the said [*doweress*] hath agreed to accept the said annuity, or yearly sum of pounds, so given and bequeathed to her as aforesaid, in lieu and satisfaction of all dower which she could or might claim out of the said testator's freehold estates, and to release the same accordingly; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said annuity, or yearly sum of pounds, so given and bequeathed to her the said [*dowress*] as aforesaid; SHE the said [*dowress*] *Hath* remised, released, and for ever quit claimed, and by these presents *Doth* remise, release, and for ever quit claim unto the said [*trustees*], their heirs and assigns, ALL the dower or thirds at the common law, and all other the estate, right, title, interest, property, claim, and demand whatsoever, both at law or in equity, (save and except in respect of the said annuity, or yearly sum of pounds,) of her the said [*dowress*] in, to, out of, or upon ALL and singular the freehold messuages or tenements, lands, and hereditaments and premises, and shares of freehold messuages or tenements, lands and hereditaments, which in and by the said will of the said [A.], were given and devised to them the said [*trustees*], their heirs and assigns, *In trust* as aforesaid, and every part and parcel thereof; so that they the said [*trustees*], their heirs or assigns, shall and may, from time to time, and at all times hereafter, have, hold,

His death, and probate of his will;

and the agreement to release.

Testatum clause.

Release of dower.

RELEASE OF DOWER.

use, occupy, possess, and enjoy ALL and singular the same messuages or tenements, lands, and hereditaments and parts and shares of messuages or tenements, lands, hereditaments, and premises, and every of them, and every part and parcel thereof respectively, freed, and absolutely exonerated and discharged of and from the dower, or right or title to dower of her the said [*dowress*], and all other her claims and demands whatsoever, (save and except in respect of the said annuity, or yearly sum of pounds, so given and bequeathed to her for her life, by the said will of the said [A.] as aforesaid.) IN WITNESS, &c.

RELEASE OF DOWER.

RELEASE OF DOWER, *out of an Estate which was conveyed to the Husband of the Dowress in Fee: Provision in lieu of Dower having been made for the Dowress by her Marriage Settlement. With Variations for the circumstance of the Dower being Released, in consideration of Natural love and affection for the* HEIR.

Parties.

THIS INDENTURE, made the day of , BETWEEN [*dowress*] of, &c. widow and relict of [*husband*], late of aforesaid, esq. deceased, of the one part; and [*one devisee in trust*] (*a*) of, &c. and [*the other devisee in trust*] of, &c. of the other part; WHEREAS

Recital of the conveyance to the husband.

by indentures of lease and release, bearing date respectively the and days of , the release being made between [A. B.] therein described, of the first part; [C. D.], therein described, of the second part; and the said [*husband*], of the third part; the said [A. B.], and

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HEIR.

(*a*) If the owner of the estate has died intestate, say,

"[*Heir*] of, &c. of the other part;"

by his direction, the said [C. D.], did, (for the considerations in the said indenture of release mentioned), grant, release, and convey unto the said [*husband*], his heirs and assigns, ALL that, &c. (*parcels*), *And* all and singular the appurtenances to the same messuages or tenements, hereditaments and premises, belonging or appertaining, *And* all the estate, right, title, and interest, of the said [A. B.] and [C. D.] therein; *To hold* the same unto and to the use of the said [*husband*], his heirs and assigns for ever; AND WHEREAS the said [*husband*] (*b*) did, in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date the day of , and thereby (amongst other things) gave and devised the said messuages or tenements, hereditaments and premises, so comprised in, and conveyed by the said hereinbefore recited indentures as aforesaid, and their appurtenances, unto and to the use of the said [*devisees in trust*], their heirs and assigns for ever; *But* nevertheless, upon the several trusts in the said will declared concerning the same; (*Recite testator's death, and probate of his will, as ante, p.* 207); AND WHEREAS, (*c*) by an indenture of settlement, executed upon the marriage of the said [*husband*] with the said

RELEASE OF DOWER.

His will.

The marriage settlement.

(*b*) In case of an intestacy, recite it thus: HEIR.

"AND WHEREAS the said [*husband*] departed this life on or about the day of , intestate, leaving the said [*heir*], his eldest son, his heir at law;"

(*c*) If the dower is released in consideration of natural love and affection, say, HEIR.

"AND WHEREAS the said [*dowress*] hath agreed, in consideration of the natural love and affection which she hath and beareth for and towards her son, the said [*heir*], to release the said messuages or tenements, lands, hereditaments, and premises, comprised in, and conveyed by the said hereinbefore recited indentures as aforesaid, and their appurtenances, of and from her right or title to dower therein, and all other her claims and demands whatever, in manner hereinafter mentioned;"

RELEASE OF DOWER.

[*dowress*], several sums in the three pounds per cent. consolidated bank annuities, and other funds and securities therein mentioned, were settled upon the trusts therein declared, for the benefit of the said [*dowress*], during her life, and afterwards, for the children of the said marriage, *And* by the said indenture, it was declared and agreed, that the provision thereby made for the said [*dowress*], should be in lieu, bar, and full satisfaction of all dower and thirds to which the said [*dowress*] should or might become entitled, in or out of any lands, tenements, or hereditaments, of which the said [*husband*] then was, or at any time during the said then intended marriage should be seised for an

The agreement to release.

estate of freehold and inheritance; AND WHEREAS, the said [*dowress*] hath agreed, at the request of the said [*devisees in trust*], and in consideration of the provision so made for her by the hereinbefore mentioned or recited indenture of settlement as aforesaid, to make and execute

Testatum.

the release hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the premises (*d*), SHE the said [*dowress*] *Doth* by these presents remise, re-

Release of dower accordingly.

lease, and for ever quit claim unto the said [*devisees in trust*], their heirs and assigns, ALL the dower, or thirds, or right or title to dower, or thirds, which, at or by the common law or otherwise she the said [*dowress*] hath, or can, or may, or, but for these presents, might, or could have, claim, challenge, or demand, in, to, or out of all and singular the said messuages or tenements, lands, hereditaments, and premises, comprised in, and conveyed by the said hereinbefore recited indenture of lease and release as aforesaid (*e*), and

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HEIR.

(*d*) In a release of dower in favour of a son or heir, it is as well to repeat, in the witnessing part, the words—

"And for and in consideration of the natural love and affection which the said [*dowress*] hath and beareth for and towards the said [*heir*],"

HEIR.

(*e*) When the testator's or intestate's estates, which are liable to dower, have been conveyed by one deed, it is better to recite the deed in the release, or—which is preferable—to endorse the release on the deed of conveyance; but when the estates intended to be released, have been

their appurtenances, or any of them, or any part thereof; *And* also all other the estate, right, title, interest, property, claim, and demand whatsoever, of her the said [*dowress*], in, to, out of, or upon the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances, or any of them, or any part thereof (*f*). In witness, &c.

RELEASE OF DOWER.

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acquired by the testator or intestate by different conveyances, or have been held for some time by descent, it is better to let the release of dower extend to *all* the lands of which the testator or intestate may have been seised at the time of his death. On such an occasion the following short form may be useful;

"Know all men by these presents, that I, [*doweress*] of, &c. widow of [A. B.], late of , gent. deceased, *Do*, (in consideration of the sum of pounds, of lawful, &c. to me now paid by [X. Y.] of, &c. the nephew and heir at law of the said [A. B.],) by these presents, remise, release, and for ever quit claim unto the said [X. Y.] his heirs and assigns, All and every the messuages or tenements, lands, hereditaments, and premises, of which the said [A. B.] was seised for an estate of inheritance, at the time of his decease, and their appurtenances, and all the dower or thirds, and right and title to dower or thirds, and other estates, rights, and interests whatsoever, of me the said [*dowress*], in, to, or out of the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances, or any of them, or any part or parts thereof. In witness, &c.

General release of dower.

(*f*) The words *To the end, intent, &c.* as in the last precedent, are more generally inserted; but they seem mere repetition.

RELEASE *of an Equity of Redemption to the Mortgagee* (*a*) by Indorsement.

RELEASE OF AN EQUITY OF REDEMPTION.

THIS INDENTURE, made the day of , BETWEEN the within named [*mortgagor*] of the one part, and the within named [*mortgagee*] of the other part; WHEREAS the said [*mortgagor*] hath agreed with the said [*mortgagee*] for the absolute sale to him the said [*mortgagor*] of the messuages or tenements, hereditaments and premises comprised in and granted and released by the within written indenture, and their appurtenances, and the fee simple and inheritance thereof in possession, free from incumbrances, for the sum of pounds; AND WHEREAS there is now due and owing from the said [*mortgagor*] to the said [*mortgagee*], on the security of the said within written indenture, for principal and interest, the sum of pounds, as he the said [*mortgagor*] doth hereby admit and acknowledge; which sum it hath been agreed should be retained or paid out of the said purchase money, or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract or agreement, and in satisfaction and discharge of the said debt or sum of pounds, which is so due and owing from the said [*mortgagor*] to the said [*mortgagee*], on the security of the said within written indenture as aforesaid, and in consideration of the sum of pounds, by the said [*mortgagee*] to the said [*mortgagor*] in hand, well and truly paid at or immediately before the sealing and delivering of these presents, (the receipt of which said sum of pounds, the said [*mortgagor*] doth hereby admit and acknowledge, and declare the same, together with the said debt or sum of pounds, to be in full satisfaction and discharge of the said purchase money, or sum of pounds, for which the said messuages or tene-

Parties.

Recites the agreement to sell.

that —— *l.* are due on the mortgage, which it is agreed shall be retained out of the purchase-money.

Testatum clause.

Mortgagor, in satisfaction of the mortgage debt, and of —— *l.* now paid,

(*a*) Under the title PURCHASE DEEDS will be found other forms of releases of equities of redemption. It is to be remembered, that on such releases the *ad valorem* duty on a conveyance on a *sale* will be payable for the money due on the mortgage at the time of the release, as well as for the sum agreed to be given for the equity of redemption. See the eighth provision, under the word CONVEYANCE, in the schedule to the Stamp Act, 55 Geo. III. c. 184.

ments, hereditaments and premises comprised in and granted and released by the said within written indenture, and their appurtenances, have been so sold as aforesaid, and of and from the same and every part thereof doth hereby acquit, release, and for ever discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns), He the said [*mortgagor*] *Hath* granted, remised, released, and confirmed; *And* by these presents *Doth* grant, remise, release, and confirm unto the said [*mortgagee*], his heirs and assigns, All and singular the said messuages or tenements, hereditaments and premises in the said within written indenture described, and thereby granted and released, or intended so to be, and their and every of their appurtenances, *And* all the right, title, and equity of redemption, which is subsisting in the same messuages or tenements, hereditaments and premises, under, or by virtue of the said within written indenture, or the proviso, or agreement for redemption therein contained, and all other the estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagor*], in to, out of, or upon the same messuages or tenements, hereditaments and premises, and every or any part thereof; To have and to hold the said messuages or tenements, hereditaments, and all and singular other the premises hereby released, or intended so to be, and their appurtenances, unto and to the use of [*mortgagee*], his heirs and assigns for ever, absolutely freed and discharged of and from the proviso or agreement for redemption in the said within written indenture contained, and all right, title, or equity of redemption whatsoever, which was subsisting in the same messuages or tenements, hereditaments, and premises, immediately before the execution of these presents. (*Covenants from* [*mortgagor*] *with* [*mortgagee*], *that he the* [*mortgagor*] *has not since the execution of the said within indenture done any act to incumber; and that he and all persons claiming under him will execute further assurance.* In witness, &c. (*b*)

RELEASE OF AN EQUITY OF REDEMPTION.

releases to the mortgagee,

the parcels conveyed by the within indenture.

Habendum in fee, free from all right or equity of redemption.

Covenant from mortgagor that he has done no act to incumber, and for further assurance.

(*b*) If the mortgagee is married, it will be proper, instead of taking a simple release of the equity of redemption in the above form, to make the mortgagee and mortgagor join in conveyance to a third party, to the usual uses to bar dower in favour of the mortgagee.

RELEASE TO TRUSTEES OF A MARRIAGE SETTLEMENT, ON PAYMENT OF THE TRUST FUNDS.

RELEASE *from a Lady to the Trustees of her Marriage Settlement, on Payment over to her of the Trust Fund; to which, in the events that had happened, she was entitled for her separate Use during her Life, with Remainder to herself absolutely; but subject, as to her Life Interest, to a Clause in restraint of Alienation: and Covenant of Indemnity to the Trustees.*

THIS INDENTURE, made the day of , BETWEEN [*releasor*] of, &c. of the one part, and [*one of the releasees*] of, &c. and [*the other of the releasees*] of, &c. of the other part. WHEREAS by an indenture of settlement, bearing date on or about the day of , and made, or expressed to be made, between [A. B.] of, &c. of the first part; the said [*releasor*], (by her then name and description of of spinster), of the second part; and the said [*releasees*], of the third part, The several sums of pounds, three pounds per cent. consolidated annuities, and pounds, three pounds ten shillings per cent. reduced bank annuities respectively, transferred to and then standing in the names of the said [*releasees*], in the books of the governor and company of the Bank of England, as therein is mentioned, were (in consideration of a marriage then intended and soon afterwards solemnized between the said [A. B.] and [*releasor*], and for other the considerations therein expressed) settled upon the trusts following (that is to say); *Upon trust* during the life of the said [*releasor*], to pay the dividends and annual produce of the said sums of pounds, three pounds per cent. consolidated bank annuities, and pounds, three pounds ten shillings per cent. reduced bank annuities, to such persons, and for such intents and purposes, as the said [*releasor*], notwithstanding her then intended or any future coverture, should from time to time, by any note or writing under her hand, but not so as to deprive herself of the benefit thereof by

Recital of the marriage settlement.

RELEASE TO TRUSTEES OF A MARRIAGE SETTLEMENT, ON PAYMENT OF THE TRUST FUNDS.

sale, charge, or otherwise, in way of anticipation, direct or appoint; *And* for want of such direction or appointment, into her own hands for her separate use and benefit, as therein is mentioned; *And* after the decease of the said [*releasor*], *Upon trust* to transfer and pay the said sums of pounds, three pounds per cent. consolidated bank annuities, and pounds, three pounds ten shillings per cent. reduced bank annuities, and the dividends and annual produce thereof respectively, in such manner, for the benefit of the child or children of the said [A. B.] and [*releasor*], as in the said indenture is mentioned; *And* by the said indenture it was declared, that in case there should not be any child or children of the said [A. B.] by the said [*releasor*], or being such, he, she, or they, should all, being a son or sons, die under the age of twenty-one years, or being a daughter or daughters, die under that age, without being or having been married with the consent of her or their parent or parents, or guardian or guardians for the time being, the said sums of pounds, three pounds per cent. consolidated bank annuities, and pounds, three pounds ten shillings per cent. reduced bank annuities, and the dividends and annual produce thereof respectively, should remain and be *In Trust* for such person or persons, for such intents and purposes, and in such manner as the said [*releasor*], by any deed or writing to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament to be by her signed and published, as in the said indenture is mentioned, should, whether covert or sole, direct or appoint; *And* in default of such direction or appment, and subject thereto, upon the trusts in the said indenture declared concerning the same; *And* in the said indenture was contained a power enabling the trustees thereof, with the consent of the said [*releasor*], during her life, and after her decease, at their own discretion, to sell the said sums of pounds, three pounds per cent. consolidated bank annuities, and pounds, three pounds ten shillings per cent. reduced bank annuities, or any part thereof, and to invest the produce of such sale in any of the public stocks or funds, or on govern-

RELEASE TO TRUSTEES OF A MARRIAGE SETTLEMENT, ON PAYMENT OF THE TRUST FUNDS.

ment securities, or real securities in England or Wales, and with the like consent, or at the like discretion, to alter and vary the said stocks, funds, and securities, for or into other stocks, funds, or securities of the like nature, as occasion should require; AND WHEREAS on or about the day of , the said [*releasees*] did, in pursuance of the power or authority to them for that purpose given in and by the said hereinbefore recited indenture, and with the consent and approbation of the said [*releasor*], sell and dispose of the hereinbefore mentioned sum of pounds, three pounds ten shillings per cent. reduced bank annuities, and pay the produce thereof, after deducting the broker's commission (amounting to the sum of pounds), unto [X. Y.] of , in the county of , Esquire, on the security of a mortgage of an estate belonging to him the said [X. Y.], situate at, &c.; AND WHEREAS the said [A. B.] departed this life on or about the day of ; AND WHEREAS there was never any issue of the said marriage between the said [A. B.] and [*releasor*]; AND WHEREAS by a deed poll or instrument in writing, under the hand and seal of the said [*releasor*], bearing date on or about the day of , the said [*releasor*] did direct and appoint that the dividends, interest, and annual produce of the therein and hereinbefore mentioned sum of pounds, three pounds per cent. consolidated bank annuities, and of the said sum of pounds, so lent to the said [X. Y.] by way of mortgage as aforesaid, and of the stocks, funds, and securities, in or upon which the same sums might thereafter be invested, should be paid unto her the said [*releasor*] during her life, for her own use and benefit, and that the same sums, stocks, funds, and securities, and the interest, dividends, and annual produce thereof respectively, should (subject to the aforesaid trust) remain and be *In trust* for her the said [*releasor*], her executors, administrators, and assigns, for her and their own use and benefit, and be transferred and paid to her and them accordingly. AND WHEREAS the said sum of pounds, which was so lent to the said [X. Y.], on such mortgage security as aforesaid, was, on or about the day of last, paid in and laid out by

of the sale of part of the trust fund, and investment of it on a mortgage;

of the death of the husband, and failure of children;

of the appointment by the lady of the trust fund in her own favour;

the payment in of the money lent on mortgage.

RELEASE TO TRUSTEES OF A MARRIAGE SETTLEMENT, ON PAYMENT OF THE TRUST FUNDS.

the said [*releasees*] in the purchase, in the name of the said [*releasor*], of the sum of pounds, new four pounds per cent. annuities, as the said [*releasees*] do hereby respectively testify and declare, and the said [*releasor*] doth hereby admit and acknowledge; AND WHEREAS doubts have been expressed whether, in consequence of the clause in restraint of anticipation annexed to the trust in the hereinbefore recited indenture, declared in favour of the said [*releasor*], the said [*releasees*] can, during her life, safely transfer or pay over to her, under the appointment made by the said recited deed poll as aforesaid, the trust funds and securities now remaining in their names and power, as trustees of the said recited indenture as hereinbefore is mentioned; but as it is extremely improbable that the said [*releasor*] will ever marry again, the said [*releasees*] have consented and agreed, at the request of the said [*releasor*], to transfer into her name, in the books of the governor and company of the Bank of England, the hereinbefore mentioned sum of pounds, three pounds per cent. consolidated bank annuities, on the said [*releasor*] making the release, and entering into the covenant for indemnity hereinafter respectively contained; AND WHEREAS, in pursuance and performance of the said agreement on the part of the said [*releasees*], the said [*releasees*] have this day caused the hereinbefore mentioned sum of pounds, three pounds per cent. consolidated bank annuities to be transferred into the name of the said [*releasor*], in the said books of the governor and company of the Bank of England, as she the said [*releasor*] doth hereby admit and acknowledge; AND WHEREAS the said [*releasees*] have duly paid, or allowed in account, to the said [*releasor*], all the dividends, interest, and annual produce which since the execution of the said hereinbefore recited indenture have been received, or made from the several trust monies, stocks, funds, and securities hereinbefore mentioned, as she the said [*releasor*] doth hereby also testify, admit, and acknowledge. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement on the part of the said [*releasor*], and in consideration of the premises, SHE the said [*releasor*] hath remised, released,

That doubts have been entertained whether, in consequence of the clause against anticipation, the trustees can safely transfer the trust fund;

but that, as the lady is not likely to marry, they have agreed to make such transfer, on being released and indemnified;

that the trustees have transferred the stock, and paid up all the dividends thereon.

First witnessing part.

The lady releases

RELEASE TO TRUSTEES OF A MARRIAGE SETTLEMENT, ON PAYMENT OF THE TRUST FUNDS.

and for ever quit claimed; *And* by these presents *Doth* remise, release, and for ever quit claim unto the said [*releasees*] and each of them, and to their and each of their heirs, executors, and administrators, and every of them, all and all manner of actions and suits, cause and causes of actions and suits, accounts, reckonings, claims, and demands whatsoever, at law or in equity, which she the said [*releasor*] now hath, or can or may, or but for these presents could or might have, constitute, commence, take, enforce, or set up against, upon, or from them the said [*releasees*], or either of them, or their, or either of their executors or administrators, for or by reason, or on account of the said sums of pounds, three pounds per cent. consolidated bank annuities, and pounds, three pounds ten shillings per cent. reduced bank annuities, so respectively settled by the said hereinbefore recited indenture as aforesaid, or either of them, or any part thereof respectively, or the monies produced by the sale of the said last mentioned sum, or for or by reason, or on account of all or any part of the dividends, interest, or annual produce of the same trust monies, stocks, funds, or securities, or any part thereof respectively, or any matter, cause, or thing whatsoever, in anywise relating to the same, or to the trusts of the said hereinbefore recited indenture, or any of them: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*releasor*], and in consideration of the premises, SHE the said [*releasor*] *Doth* hereby for herself, her heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*releasees*], and each of them, and their and each of their executors and administrators, that she the said [*releasor*], her heirs, executors, and administrators, or some or one of them, shall and will, from time to time, and for ever hereafter, at her or their own costs, charges, and expenses, well and effectually indemnify, save harmless, and keep indemnified the said [*releasees*], and each of them, and their and his respective heirs, executors, and administrators, and each and every of them, of, from, and against all and all manner of actions, suits, proceedings, costs, losses, charges,

all claims under the settlement.

Second witnessing part.

The lady covenants to indemnify the trustees against all loss from having made the aforesaid transfers and payments.

damages, expenses, claims, and demands whatsoever, which they, or any of them, shall or may be involved in, incur, sustain, expend, or be put unto, for or by reason or on account or in consequence of the said [*releasees*] having made the several transfers and payments hereinbefore mentioned and recited, or any of them(*a*). In witness, &c.

RELEASE TO TRUSTEES OF A MARRIAGE SETTLEMENT, ON PAYMENT OF THE TRUST FUNDS.

Release *from a Residuary Legatee to the Executors of a Will, on a final Settlement of the Executorship Accounts.*

RELEASE TO EXECUTORS, ON A FINAL SETTLEMENT OF EXECUTORSHIP ACCOUNTS.

THIS INDENTURE, made the day of , Between [*residuary legatee*] of, &c. of the one part, and [*one executor*] of, &c. and [*other executor*] of, &c. of the other part; Whereas [*testator*], late of, &c. duly signed and published his last will and testament in writing, bearing date the day of , and thereby, after directing the payment of his just debts and funeral and testamentary expences, gave and bequeathed to his nephews and nieces [A. B.] of, &c. [C. D.] of, &c. (*and several others*) the sum of pounds each, and directed that the same should be paid within six calendar months next after his decease; *And* the said testator by his said will, gave and bequeathed to his wife, in addition to the provision made for her by their marriage settlement,

Parties.

Recites the will.

(*a*) It is proper here to mention, that the above precedent was prepared and used prior to the decision of the case of *Barton* v. *Briscoe*, Jacob, 603; and that previously to its preparation, the trustees of the settlement recited in p. 223, were advised, that if no provision had been made for the event of a *future* marriage, the clause in restraint of alienation of the yearly income would have ceased upon the death of the first husband, and that they might have safely transferred the fund. There was, however, no positive decision to that effect till the above case, though the case of *Brandon* v. *Robinson*, 1 Rose, 197, seemed to justify such an opinion.

RELEASE TO EXECUTORS, ON A FINAL SETTLEMENT OF EXECUTORSHIP ACCOUNTS.

a yearly rent-charge of pounds during her life, to be issuing out of the messuage or dwelling house in which he then dwelt, and the farm and lands held and enjoyed therewith, and then in his own occupation, and their appurtenances, and to be paid as in the said will is mentioned and subject to the said rent charge, the said testator gave and devised the same messuage or dwelling house, and farm and lands, and their appurtenances, to [X. Y.] of, &c. his heirs and assigns for ever; *And* the said testator by his said will, gave, &c. *an estate at Hampton to the said* [executors] *their heirs and assigns, upon trust, to sell such part thereof (if any) as might be necessary to pay the debts, legacies, &c. and to settle the residue on the said* [residuary legatee] *for his life, with remainder to his first and and other sons successively, in tail male, with divers remainders over, &c.* (*Then followed several specific devises and bequests;*) *And* the said testator did by his said will, give and bequeath all his money in the funds, mortgages, and other securities, and all other his personal estate and effects whatsoever, not thereinbefore specifically bequeathed, or otherwise disposed of, or so much and such part or parts thereof as should remain, after payment of all his just debts and funeral and testamentary expenses and legacies, unto the said [*residuary legatee*], his executors, administrators, and assigns, for his and their own absolute use and benefit; *And* the said testator nominated and appointed the said [*executors*], executors of his said will. AND WHEREAS the said [*testator*] departed this life soon after making his said will, and on the day of , his said executors proved his said will in the court of . AND WHEREAS the said [*executors*], in execution of the trusts reposed in them by the said will of the said [*testator*] as aforesaid, possessed themselves of the personal estate and effects of the said [*testator*], and out of such part of the same as was applicable thereto, paid his debts and funeral and testamentary expenses, and legacies, and invested the remainder thereof in the purchase in their names, of the sum of pounds, three pounds per cent. consolidated bank annuities, transferrable at the Bank of England; *And* applied and disposed of the rest of his said personal estate in the manner

Death of testator and probate of his will.

That the executors took possession of the personal estate, and thereout paid debts, &c. and invested the residue in the 3-per cents.

RELEASE TO EXECUTORS, ON A FINAL SETTLEMENT OF EXECUTORSHIP ACCOUNTS.

That the executors have conveyed and settled the real estate as directed by the will.

directed by his said will; AND WHEREAS the said personal estate and effects of the said [*testator*] being more than sufficient to pay all his just debts, and funeral and testamentary expenses and legacies, the said [*executors*] have, by indentures of lease and release, the lease bearing date before the release, and the release bearing even date with these presents, and made, or expressed to be made, between the said [*executors*], of the first part; the said [*residuary legatee*], of the second part; [E. F.] and [G. H.], therein respectively described, of the third part; [I. J.] and [K. L.], therein respectively described, of the fourth part; and [Y. Z.], therein described, of the fifth part, conveyed the said estate at Hampton, which was so devised to them as aforesaid, unto the said [Y. Z.] and his heirs, *To the uses*, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers and provisoes to, for, upon, with, under, and subject to which the same were directed to be settled by the said will of the said [*testator*], as aforesaid. AND WHEREAS an account of the money and other property which came to the hands of the said [*executors*], under the said will of the said [*testator*], and of their application of the same, hath been rendered to the said [*residuary legatee*], and perused and approved by him, and a copy thereof is annexed by way of schedule to these presents (*a*); AND WHEREAS the said [*executors*] have this day, at the request of the said [*residuary legatee*] (*b*), transferred into the name

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Schedule.

(*a*) When the accounts are very long, it will be better to omit the schedule, as the expense of its insertion will be considerable, even in stamp duty. But in that case it may be recited generally, that accounts have been rendered, and been perused and approved.

(*b*) It frequently happens that a testator bequeaths to his trustees and executors specific sums, in trust for his children, during their respective *lives*, and afterwards for *their* respective children absolutely; and then gives the residue of his estate to his own children in equal shares absolutely. In such case, it will be proper, on releasing the executors, to introduce before the last recital, a recital of the appropriation and investment of the specific sums bequeathed to the residuary legatees for life, with remainder to their children; and by the first witnessing part to make the trustees and executors join in a declaration, that they will

RELEASE TO EXECUTORS, ON A FINAL SETTLEMENT OF EXECUTORSHIP ACCOUNTS.

of him the said [*residuary legatee*], in the books of the governor and company of the bank of England, the hereinbefore mentioned sum of pounds, three pounds per cent. consolidated bank annuities, so purchased by them the said [*executors*] as aforesaid, as he the said [*residuary legatee*] doth hereby admit and acknowledge; AND WHEREAS the dividends and legacy duty which have respectively become payable for the said sum of pounds, three pounds per cent. consolidated bank annuities, have been fully paid and satisfied, as they the said [*residuary legatee*] and [*executors*] do hereby respectively testify and declare; AND WHEREAS the said [*residuary legatee*] hath agreed to make and execute the declaration and release hereinafter contained. NOW THEREFORE THESE PRESENTS WITNESS, *And* the said [*residuary legatee*] *Doth* hereby testify and declare, that he the said [*residuary legatee*] hath inspected and considered the hereinbefore mentioned accounts, and that the vouchers for the same have been delivered to him; *And* that he the said [*residuary legatee*] is perfectly satisfied with the same respectively; *And* that he the said [*residuary legatee*] doth hereby for himself, his heirs, executors, and

Testatum clause.

The residuary legatee approves the accounts and releases the executors.

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stand possessed of the sums so invested, upon the trusts declared thereof by the will; and by the second witnessing part, to make the residuary legatees release the executors from all claims, except such as may arise under the above trusts, in the following, or a like form; the directions in that behalf being set out in the previous recital of the will:

General release of all claims arising upon the trusts and executorship of the will.

"AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement, on the part of the said [*releasors*], *And* in consideration of the premises, THEY the said [*releasors*] *Have*, and each of them *Hath*, acquitted, released, and for ever discharged, *And* by these presents *Do*, and each of them *Doth*, acquit, release, snd for ever discharge the said [*releasees*], and each of them, and their, and each of their heirs, executors, and administrators, of and from all accounts, reckonings, actions, suits, claims, and demands whatsoever, which they the said [*releasors*], or any of them now have or hath, or

RELEASE TO EXECUTORS, ON A FINAL SETTLEMENT OF EXECUTORSHIP ACCOUNTS.

administrators, acquit, release, and for ever discharge the said [*executors*], and each of them, and their and each of their heirs, executors, administrators, and assigns, and their and each of their estates and effects whatsoever and wheresoever, of and from all accounts, reckonings, transactions, matters, and things, relating to, or arising from the said will of the said [*testator*], or the real and personal estate thereby given and bequeathed as aforesaid, or any part thereof, or any matter or thing whatsoever, in any wise connected therewith; and also of and from all actions, suits, claims, and demands for or in respect of the same, or any of them(*c*). IN WITNESS, &c.

(*c*) Here add the schedule.

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which they or any of them, or their or any of their heirs, executors, or administrators, can or may, or otherwise could or might have, against or upon the said [*releasees*], or either of them, or their, or either of their heirs, executors, or administrators, for or in respect of the said personal estate and effects so given and bequeathed by the said will of the said [*testator*], as hereinbefore is mentioned, or any part or parts thereof, or for or in respect of the trusts and executorship of the same will, or for or in respect of any matter, cause, or thing whatsoever, in any wise relating thereto; *Save* and except such claims and demands as shall or may arise upon or by virtue of the trusts hereinbefore declared and contained, or some or one of them. IN WITNESS, &c.

except such trusts as may arise upon the trusts before declared.

GENERAL RELEASE.

Mutual *General* Release *between Two Persons.*

To all to whom these presents shall come, [A. B.] of, &c. and [C. D.] of, &c. send greeting: Whereas there have been several accounts and pecuniary transactions between the said [A. B.] and [C. D.], all of which are now adjusted and settled; Now therefore know ye, that each of them the said [A. B.] and [C. D.] doth hereby for himself and herself, and his and her respective heirs, executors, and administrators, remise, release, acquit, and for ever discharge the other of them, his or her heirs, executors, and administrators, and his or her and their estates and effects whatsoever and wheresoever, of and from all sum and sums of money, accounts, reckonings, actions, suits, claims, and demands whatsoever, from the beginning of the world to the day of the date of these presents. In witness, &c.

GENERAL RELEASE.

General Release *of all Demands.*

Know all men by these presents, that I, [A. B.] of, &c. in consideration of the sum of pounds of lawful money of Great Britain, to me now in hand well and truly paid by [C. D.] of, &c. *Have* remised, released, and for ever discharged, *And* by these presents *Do* remise, release, and for ever discharge the said [C. D.], his heirs, executors, and administrators, and every of them, of and from all and all manner of actions and suits, cause and causes of actions or suits, debts, sum and sums of money, accounts, reckonings, bonds, bills, notes, covenants, contracts, agreements, promises, differences, damages, claims, and demands whatsoever, which either at law or in equity I, the said [A. B.] now have, or which I, my heirs, executors, or administrators, hereafter can, shall, or may have, claim, challenge, or demand against or upon the said [C. D.], his heirs, executors, or administrators, or any of them, for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the world, up to and inclusive of the day of the date of these presents. In witness, &c.

Deed of Covenant *whereby a Judgment Creditor agreed that he would not take in Execution under it, certain Lands sold to a Purchaser.*

COVENANT NOT TO TAKE IN EXECUTION UNDER A JUDGMENT, LANDS SOLD TO A PURCHASER.

THIS INDENTURE, made the day of , Between [*judgment creditor*] of, &c. of the first part; [*vendor*] of, &c. of the second part; and [*purchaser*] of, &c. of the third part; Whereas, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made, or expressed to be made, between the said [*vendor*] of the first part; [A. B.] therein described, of the second part; the said [*purchaser*] of the third part; and [*trustee to bar dower*] of, &c. of the fourth part: All that, &c. (*parcels*) have (in consideration of the sum of pounds, by the said [*purchaser*] to the said [*vendor*] paid, as in the said indenture of release is mentioned) been conveyed by the said [*vendor*] and [A. B.] *To the use of* the said [*purchaser*] and his assigns during his life, without impeachment of waste; *And* after the determination of that estate by forfeiture or otherwise in his life time, *To the use of* the said [*trustee to bar dower*], and his heirs, during the life of the said [*purchaser*], *In trust* for him the said [*purchaser*] and his assigns, and to prevent the present or any future wife of the said [*purchaser*] from being entitled to dower in or out of the said premises, or any part thereof; *And* immediately after the determination of the said estate, so limited to the said [*trustee to bar dower*] and his heirs, during the life of the said [*purchaser*] as aforesaid, *To the use of* him the said [*purchaser*], his heirs and assigns for ever; And whereas, in the year of the reign of his present Majesty King George the , the said [*judgment creditor*] obtained judgment in his Majesty's Court of King's Bench at Westminster, in an

Recital of conveyance to the purchaser by indentures of lease and release of even date;

of a judgment against vendor;

COVENANT NOT TO TAKE IN EXECUTION UNDER A JUDGMENT, LANDS SOLD TO A PURCHASER.

action of debt against the said [*vendor*], for the sum of pounds and costs, under or by virtue of a certain warrant of attorney, under the hand and seal of the said [*vendor*], bearing date the day of , and duly filed as directed by the statute for that purpose made and provided;

and the agreement that the judgment creditor should covenant with purchaser as after mentioned.

AND WHEREAS, upon the treaty for the sale and purchase of the said messuages or tenements, hereditaments, and premises, comprised in and conveyed by the said hereinbefore recited indentures, as aforesaid, it was arranged and agreed, that the said [*judgment creditor*] should enter into the covenant hereinafter contained.

Testatum.

NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the purchase-money or sum of pounds, so paid by the said [*purchaser*] to the said [*vendor*], as in the said recited indenture of release is mentioned; HE, the said [*judgment creditor*], at the request of the said [*vendor*], (testified, &c.), doth hereby for himself, his heirs, executors, and administators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that he, the said [*judgment creditor*], his executors, administrators, or assigns, or any of them, shall not, nor will at any time hereafter, take or cause to be taken, the said messuages or tenements, hereditaments and premises, comprised in and conveyed by the said hereinbefore recited indentures as aforesaid, or any of them, or any part thereof, or the rents, issues, and profits of the same, or any part thereof, in execution under or by virtue of the said hereinbefore recited judgment, or take, adopt, or do any other proceedings, acts, deeds, matters, or things whatsoever, whereby or by reason or means whereof the said [*purchaser*], his heirs or assigns, owner or owners for the time being of the said messuages or tenements, hereditaments, and premises, or any of them, shall or may be in any wise molested, disturbed, or troubled, by reason or in consequence of the said judgment. IN WITNESS, &c.

The judgment creditor covenants not to take

the purchased premises in execution under the judgment.

SEPARATION DEEDS.

Separation deeds a species of settlement.

Separation Deeds are a species of Settlement, and are so called from the circumstance which gives occasion for them:—the separation by mutual agreement of a husband and wife. They generally contain, in addition to the provision which is made for the support and maintenance of the wife, stipulations on the part of the husband, that he will allow the wife to live separate and apart from him, and that he will not in any manner molest or disturb her in her way of living, and that any property he may afterwards acquire in her right shall be settled for her separate use, and be at her absolute disposal. As these engagements cannot be entered into with the wife herself on account of the legal effect of the marriage connection, some friend or relation of the wife's is always nominated as *covenantee;* and it is usual to make such friend or relation the trustee of the property which is settled on the wife, and to get him or her to enter into engagements for indemnifying the husband against the debts the wife may contract during the separation, and also against any claims from the wife either for cohabitation, maintenance, or alimony.

Usual provisions in deeds of separation.

In some cases, a settlement is made on the wife and children, without any provision as to the terms of separation, both the husband and wife being satisfied, from the incompatibility of temper or other cause of disunion, that no wish will or can exist, on either side, for future cohabitation. In others, provision is made for the support of both husband and wife, but as to each, subject to forfeiture on his or her violating the articles of separation.

The provisions of deeds of this kind will, however, necessarily vary considerably, according to the circumstances of the parties, and the nature of the settlement made for their, or one of their, support.

Validity of settlements of this kind questioned, on the ground of their being contrary *to the policy of the law.*

According to the early authorities (*a*) it does not appear, that any doubt was formerly entertained respecting the validity of a settlement made upon the voluntary separation of a husband and wife, on the ground, that it was *contrary to the policy of the law;* but a doubt of this

(*a*) *Lord Rodney* v. *Chambers*, 2 East. 283. *Guth* v. *Guth*, 3 Bro. C. C. 614. *Angier* v. *Angier*, Prec. in Ch. 496. and *Seagrave* v. *Seagrave*, 13 Ves. 439.

kind was very strongly expressed by the late Chancellor, Lord *Eldon*, in the case of *Lord and Lady St. John* (*b*).

Former cases on the subject.

Settlements for the separate maintenance of a wife, actually made and operating at *law*, and also mere *articles* for a settlement, which operate only *in equity*, have been repeatedly held valid, and binding on the husband (*c*), without any objection being raised, on the ground above adverted to; and even a provision made, in contemplation of a *future* separation, has been enforced in equity, upon the separation actually taking place (*d*); but in the case of *Lord St. John* v. *Lady St. John* (*e*), Lord *Eldon* expressed a very decided opinion against the validity of such settlements, so far as they might be supposed to rest upon *principle*, though he did not feel authorised, on his individual judgment, to overturn the many previous *dicta* and decisions in their favour. He thought it was expedient that the subject should be brought before the House of Lords.

Lord St. John v. *Lady St. John.*

In the above case of *Lord St. John* v. *Lady St. John*, the following difficulties, in reference to separation deeds, were forcibly pointed out by Lord *Eldon*: 1st. that they cannot be binding as against a married woman, as she cannot enter into a contract or execute a deed; 2d. that it is against the policy of the law, that the husband should be permitted to make such a contract; and, 3dly, that the trustees of the wife have no equity, by reason of their covenant to indemnify the husband against the debts of the wife, to compel the husband specifically to perform his contract.

In reference to the first point, his Lordship said, "It is admitted, that a married woman, until separated, cannot form, or make herself liable to, any contract; and yet it is asserted, that it is competent to her, before she is in that state, to remove herself by contract out of the state in which she is, into that in which she will for the first time become capable of making a contract. I have frequently asked Mr. Justice *Buller*, who found it difficult to answer the question, how, if a married woman was in the same situation as a *feme sole*, she got into that situation (*f*)." He also added, that the deed could not possibly be pleaded in bar to the wife, on her suing for the restitution of conjugal rights (*g*).

(*b*) 11 Ves. 530.

(*c*) *Lord Rodney* v. *Chambers*, 2 East. 283. *Sealing* v. *Crawley*, 2 Vern. 386.

(*d*) *Nichols* v. *Danvers*, 2 Vern. 671.

(*e*) 11 Ves. 531. 537.

(*f*) 11 Ves. 531.

(*g*) 11 Ves. 533, and see *Durant* v. *Durant*, 1 Hagg. 760.

With respect to the second point, his lordship proceeded thus: "The contract of marriage cannot be affected by any contract between the parties. It is admitted every where, that by the known law, founded upon policy, for the sake of keeping together individual families, constituting the great family of the public, there shall be no separation *a mensâ et thoro* except *propter sævitiam aut adulterium*. The Ecclesiastical Court will not read these deeds, but will determine whether there has been *sævitia aut adulterium*; and if there has not, in the opinion of the Judge, he is not only prohibited from agreeing that the husband and wife shall be separate, but he is by the law compelled to oblige them by sentence to reside together (*h*).

In regard to the third point, his lordship's observations were to the effect,—that as it was impossible to contend that a deed of this sort could be binding on the wife; the only way in which the question could be put was, as a contract between the husband and the trustee;—and that it would be a strange state of the law, if a third party, by covenanting to indemnify the husband against the debts of his wife, could call upon a court of equity to compel the husband to permit the wife to live separate and apart from him, without reference to his conduct towards her—which the court has no jurisdiction to try; and yet, that if the wife sues in the Ecclesiastical Court for a restitution of conjugal rights, there is no relief in equity for the husband (*i*).

The Earl of Westmeath v. *The Countess of Westmeath.*

In the late case of *The Earl of Westmeath* v. *The Countess of Westmeath*, (*k*) Lord *Eldon* expressed the same opinion in regard to the validity of deeds of separation, as he had advanced in the case of *Lord St. John* v. *Lady St. John;* but said, that, after the former decisions on the subject, it was impossible for him to take upon himself to declare that they were not good at law, and left the parties to try the question at law, if they should be so advised.

Jee v. *Thurlow.*

The general question of the validity of separation deeds has been lately argued in the Court of King's Bench, (*l*) and all the judges concurred in deciding in favor of their validity; but the ground of such decision was expressly stated to be, an unwillingness to overturn former cases. In the case referred to, Lord *Tenterden*, (then Sir *C. Abbot*, C. J.), after quoting the opinion of Lord *Eldon* in *St. John* v. *St. John*,—where he said, that if the question were *res integra*, untouched by dictum or decision, he would not have allowed a covenant to do that which the Ecclesiastical Court would not permit to be the foundation of an action or a suit in equity, but that, as it was otherwise, he would not shake what was

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(*h*) 11 Ves. 532.
(*i*) 11 Ves. 533.
(*k*) Jacob, 126.
(*l*) 2 B. & C. 547.

supposed to be the settled law upon the subject—proceeded thus: "That opinion is a fit guide for us. Ought not we to say, that if a new decision is to overturn all the former cases on this question, it must be the decision of that high tribunal which is competent to give the law to all other tribunals, and rectify their errors whenever called upon to review them. For these reasons, I cannot, sitting in this place, say that the deed is void."

Elworthy v. *Bird.*

In the still more recent case of *Elworthy* v. *Bird* (*m*), before Sir *J. Leach*, V. C., effect was given to an agreement for separation between husband and wife, by a decree for specific performance.

After such repeated decisions in favor of separation deeds, it is very improbable, that validity would be denied to them, if the question were now referred to the House of Lords; and in many cases it seems expedient that a voluntary separation should be permitted, even where the cause of dissention between a husband and wife would not allow the spiritual court to decree a separation. Discordance of temper often produces great misery in the marriage relation, and its exhibition has a very pernicious influence on children and domestics.

Separation deeds now deemed valid.

Assuming, as we may, perhaps, now do, that deeds of separation are valid so far as regards their alleged inconsistency with the general policy of the law, the only other important question concerning them, which deserves consideration, respects their validity as against the husband's creditors; or,—where the provision settled for the separate maintenance of the wife is real estate, or a charge on real estate,—as against a subsequent purchaser.

Usual on separation for a relative of the wife's to indemnify the husband against her debts.

In most cases, on the separation of a husband and wife, it is required on the part of the husband, that some relation or friend of the wife's should enter into a covenant to indemnify the husband against the debts the wife may contract, during the separation, for her maintenance and support, and also against any claim on the part of the wife for the restitution of conjugal rights; and where this is the case it is well settled, that neither creditors nor subsequent purchasers can disturb the settlement made on the wife by the separation deed: such covenant of indemnity being considered *as a valuable consideration* (*n*). But where there is no such covenant of indemnity, nor any other valuable consideration to support the settlement, it seems that a settlement made on the separation of a husband and wife will stand on pre-

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(*m*) 2 Sim. & Stu. 372. Jacob, 1431, see also *Ross* v. *Willoughby*, 10 Price, 1.

(*n*) *Stevens* v. *Olive*, 2 Bro. C. C. 90; *King* v. *Brewer*, 2 Bro. C. C. 93; *Campton* v. *Collinson*, 2 Bro. C. C. 386. 9 East, 59; *Doe* v. *Manning*, *Fitzer* v. *Fitzer*, 2 Atk. 511; *Worrall* v. *Jacob*, 2 Meriv. 255.

cisely the same footing as a *voluntary* settlement made on any other occasion, and be impeachable or avoidable by creditors and subsequent purchasers in like manner (*o*).

What consideration necessary to support them;

In two cases (*p*), it appears to have been considered, that where the conduct of the husband had been such as to afford ground for a sentence of alimony in a spiritual court, that circumstance was of itself sufficient consideration to support the settlement for a separate maintenance; but to the propriety of those decisions it may be objected, that the wife is incompetent to enter into any agreement, so as effectually to *accept* in lieu of the alimony the spiritual court might decree for her, the voluntary provision offered by the husband(*q*); and that a decree for alimony only affects the husband's person, and does not withdraw his estate from his creditors(*r*).

avoidable for fraud;

If the settlement for separate maintenance be made under circumstances indicating *fraud*, as in prospect of bankruptcy, or in consideration of a covenant of indemnity from an irresponsible person, it is conceived that it would be set aside in equity.

determined by reconciliation;

If a husband and wife who have separated, are afterwards reconciled, and agree to live together again, it seems that such an agreement will of itself put an end to the articles of separation (*s*); and also, it is conceived, to the trusts which, on the separation, were declared of the settled property, for the purposes of the separation. But in a case where it was expressly provided that the separate maintenance should continue until the parties should agree to cohabit and live together again, to be testified by some writing under their hands, it was held, that future cohabitation, without such agreement in writing, did not determine the settlement (*t*).

whether separate maintenance be alienable.

In *Hyde* v. *Price* (*u*) it was held, that a provision for the separate maintenance of a wife, made on a separation, was inalienable, without any special clause in restraint of alienation; but according to later

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(*o*) *Fitzer* v. *Fitzer, ubi supra*; *Legard* v. *Johnson*, 3 Ves. 361. For a general view of the law respecting VOLUNTARY Settlements, and a statement of the cases relating to it, the reader is referred to the introductory observations to the title, SETTLEMENTS.

(*p*) *Hobbs* v. *Hull*, 1 Cox, 445; *Nunn* v. *Wilsmore*, 8 T. R. 529.

(*q*) See *Fitzer* v. *Fitzer*, 2 Ask. 513.

(*r*) 11 Ves. 533.

(*s*) *Fletcher* v. *Fletcher*, 2 Cox, 99; 3 Bro. C. C. 619, n.; *St. John* v. *St. John*, 11 Ves. 536. See *Scholey* v. *Goodman*, 1 Carr. N. P. 36.

(*t*) *Gawdon* v. *Draper*, 2 Ventr. 217.

(*u*) 3 Ves. 437.

cases (*v*), it would seem that a clause to that effect is now considered necessary, to prevent the right of alienation.

Adultery.

It has been lately decided, that a deed of separation executed during cohabitation, and not intended to be followed by immediate separation, is void (*w*); but it seems from the case of *Rodney* v. *Chambers*, before referred to, (and which has not been overruled) that a provision for future separation, which is made dependant on the approbation of trustees, is not void.

Injunction.

It seems proper, in settlements made on the separation of a husband and wife, to provide for the event of the wife committing adultery; as without such a provision, the separate maintenance will not be determined by her subsequent adultery (*x*).

If a husband proceeds against his wife in the Ecclesiastical Court, in opposition to his agreement not to do so, he will be restrained by injunction (*y*); but in case the wife sues, the husband's only remedy is against the trustee, under his covenant (*z*).

(*v*) See *Acton* v. *Smith*, 1 Sim. & Stu. 429.

(*w*) *Titley* v. *Durand*, 7 Price, 577; 2 B. & C. 551. *Hindley* v. *Lord Westmeath*, 6 B. & C. 200.

(*x*) *Seagrove* v. *Seagrave*, 13 Ves. 413; *Jee* v. *Thurlow*, 2 B. & C. 553; 4 D. & R. 13.

(*y*) See Jacob, 140. (*z*) 1 Hagg. 760.

DEED *of* SEPARATION *between Husband and Wife* (Simple Form).

BETWEEN HUSBAND AND WIFE.

THIS INDENTURE, made the day of , BETWEEN [*husband*] of &c. of the one part, and [*trustee*] of &c. and [*wife*] of &c. (the wife of the said [*husband*]) of the other part; WHEREAS some unhappy differences have arisen, and do now subsist between the said [*husband*] and [*wife*], by reason whereof they have agreed to live separate and apart for the future, and by the mediation of friends and relations, they have concurred in the following agreement, touching the terms of such separation, (that is to say), *It* hath been agreed that the said [*wife*] should from henceforth, during the joint lives of herself and the said [*husband*], live separate and apart from him the said [*husband*], in any part of Great Britain, or in any other country, in such manner as she should think fit, without any disturbance or interruption of or by him the said [*husband*], or any person or persons by his direction, or with his privity; *And* that all the jewels, plate, and effects, which previously to the marriage of the said [*wife*] with the said [*husband*], were the property of her the said [*wife*], and which have not been disposed of by the said [*husband*] or the said [*wife*], should be delivered or assigned and made over to or in trust for the sole and separate use and disposal of her the said [*wife*]; *And* that all such estates, real and personal, as during the joint lives of the said [*husband*] and [*wife*], should descend or devolve upon, or be given, devised, or bequeathed to, or in trust for her the said [*wife*], or upon, to, or for the said [*husband*], in right of the said [*wife*], should be conveyed and assigned, or otherwise assured, in such manner as that the same might be held and enjoyed by the said [*wife*] for her separate use, or be disposed of in such manner as she should, notwithstanding her coverture, think fit; *And* that the said [*husband*]

Parties.

Recites the agreement to live separate;

and the terms of such separation.

BETWEEN HUSBAND AND WIFE.

should enter into such covenants in regard to the same as are hereinafter in that behalf contained (*a*); *And* that the said [*trustee*] should indemnify the said [*husband*] against the payment of any monies for the maintenance, support, lodging or wearing apparel of the said [*wife*], during the separation, or for any debt or debts, which might be contracted by the said [*wife*], on any account or pretence whatsoever, during such separation, and also against any claim from the said [*wife*] for cohabitation; *And* that he the said [*trustee*] should covenant so to do in manner hereinafter mentioned; AND WHEREAS in pursuance and part performance of the said agreement on the part of the said [*husband*], he the said [*husband*] hath this day delivered or assigned and made over to the said [*trustee*], *In trust* for the said [*wife*], the said jewels, plate, and effects, so agreed to be delivered or assigned to or in trust for her, as hereinbefore is mentioned, as he the said [*trustee*] doth hereby admit and acknowledge. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*husband*], and in consideration of the covenants and agreements hereinafter contained on the part of the said [*trustee*], his executors or administrators, to be observed and performed, HE the said [*husband*] *Doth* for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*], his executors and ad-

and that in part performance of such agreement the jewels, plate, and effects belonging to the wife have been delivered over to a trustee for her.

First witnessing part.

Husband covenants with the

KEPT-MISTRESS.

(*a*) Under the title SETTLEMENTS will be found Forms for securing a provision for a kept-mistress, on the termination of the illicit cohabitation; but as the following condition of a bond given on such an occasion, may be also useful upon a separation between a husband and wife, where only a bond is required from the husband to secure the annuity, it is introduced in this place. On a separation between husband and wife the bond must, of course, be given to *a trustee* or *trustees* for the wife, and the condition of the bond and declaration of trust be altered accordingly.

Condition of a bond for securing an annuity to a kept-mistress, given on the termination of the cohabitation.

"NOW THE CONDITION of the above written bond or obligation is such, that if the above bounden [*gentleman*] shall and do well and truly pay, or cause to be paid, unto the above named [*lady*], one clear annuity or yearly sum of pounds, of lawful money of Great Britain and

ministrators, by these presents, in manner following, (that is to say), that notwithstanding the marriage that has been had between them the said [*husband*] and [*wife*], it shall and may be lawful to and for the said [*wife*], from time to time, and at all times hereafter, to live separate and apart

BETWEEN HUSBAND AND WIFE.

trustee, that notwithstanding the marriage, the wife may live separate.

Ireland, by four equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year, until the decease of the said [*lady*], *or* until the said [*lady*] shall assign, charge, or otherwise dispose of the same annuity or yearly sum, or any part thereof, by way of anticipation or attempt, or agree so to do, or shall do any act except marriage, whereby the said annuity or yearly sum, if payable to herself, would become vested in any other person or persons, *or* until the said [*lady*] shall by letter or otherwise molest or annoy the said [*gentleman*], or make some claim or demand against or upon him, save and except in respect of the said annuity or yearly sum hereby secured, (which ever event shall first happen;) *And* shall and do make the first quarterly payment of the said annuity or yearly sum on the day of , next ensuing the date of the above written bond or obligation; *Then*, and in such case, the above written bond or obligation shall be void. AND IT IS HEREBY EXPRESSLY DECLARED by the said [*gentleman*], that in case the said [*lady*] shall happen to marry while the said annuity or yearly sum hereby secured shall continue payable, the same shall, after her marriage, be for her sole and separate use and benefit, exclusively of her husband, and without being in any wise subject to his debts, control, interference, or engagements; *And* that the receipt or receipts, in writing, of the said [*lady*], shall, notwithstanding her coverture, be alone a sufficient discharge for the same annuity or yearly sum, or such part thereof as shall be therein mentioned and acknowledged to be received; *And* that the husband of the said [*lady*], so far as he may be legally entitled or interested in the said annuity or yearly sum, shall be and be deemed a trustee thereof for the sole and separate use of the said [*lady*]."

Declaration of trust of the annuity.

BETWEEN HUSBAND AND WIFE.

from him the said [*husband*], in such sort and manner as if she were sole and unmarried; *And* that he the said [*husband*] shall not nor will compel, or attempt to compel the said [*wife*] to cohabit and live with him, by any ecclesiastical censures or proceedings, or otherwise howsoever, or in any manner assume, claim, or exercise any rule, restraint, authority, or controul over or upon the said [*wife*], or directly or indirectly, either in person, or by any person or persons acting under his direction or sanction, molest, interrupt, or disturb her the said [*wife*] in her way of living, or in her liberty or freedom of going to, and staying in such place or places as she shall think fit, or for any cause, or under any pretence whatsoever sue or prosecute any person or persons for receiving, harbouring, protecting, or assisting the said [*wife*]; *And* that if he the said [*husband*] shall at any time hereafter act contrary to or infringe the covenants or agreements, hereinbefore on his part contained, or any of them, he the said [*husband*] shall and will immediately thereupon pay to the said [*trustee*], his executors or administrators, the sum of pounds, as, or by way, or in the nature of stated and liquidated damages, such sum to be held *In trust* for the sole and separate use and benefit of the said [*wife*], and to be at her sole and absolute disposal by deed, will, or any other writing under her hand, notwithstanding her coverture, and as if she were single and unmarried; *And* also that the said jewels, plate, and effects, so delivered or assigned, and made over by him the said [*husband*], to the said [*trustee*], *In trust* for the said [*wife*] as aforesaid, and all other the estate and effects, of what nature or kind soever, which at any time or times during the joint lives of him the said [*husband*] and the said [*wife*], shall descend or devolve upon, or be given, devised, or bequeathed to, or in trust for her the said [*wife*], or upon, to, or for him the said [*husband*], in her right, shall and may be held or enjoyed, and be disposed of by her the said [*wife*], for her sole and separate use and benefit, and in such manner as she shall think fit, exclusive of and without being subject to the debts, controul, or intermeddling of him the said [*husband*], and as if she the said [*wife*] were sole and unmarried; *And* that he the said [*husband*], his executors or administrators, and all persons claiming under him, shall and will, at any

and that he will not assume or claim any controul over her, or molest her or any person harbouring her.

and that all the wife's property shall be held and disposed of by her for her separate use, and as if she were single.

and for further assurance.

time or times hereafter, upon every reasonable request for that purpose, to be made by and at the proper costs and charges of the said [*wife*], her heirs, executors, administrators, or assigns, or of the said [*trustee*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause to be made, done, and executed, all and every such lawful and reasonable conveyances, assignments, assurances, acts, deeds, and things in the law whatsoever, for vesting such real and personal estate as aforesaid in the said [*trustee*], his heirs, executors, administrators, and assigns, as such [*trustee*] as aforesaid, and for confirming and corroborating these presents, and carrying the several purposes hereinbefore mentioned, into full and complete effect, according to the true intent and meaning of these presents, as by the said [*trustee*], his executors or administrators, or his or their counsel in the law, shall be reasonably devised or advised, and required; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement, on the part of the said [*trustee*], and in consideration of the covenants and agreements hereinbefore contained on the part and behalf of the said [*husband*], to be observed and performed, HE the said [*trustee*] at the request and with the privity of the said [*wife*], (testified by her being a party to, and sealing and delivering these presents), *Doth* for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*husband*], his executors and administrators, by these presents, in manner following, (that is to say); that he the said [*husband*] shall not be obliged to pay for the support, maintenance, lodging, and wearing apparel of the said [*wife*], or for any debt or debts which shall be contracted by her, on any account or pretence whatsoever, during the said separation; *And* that she the said [*wife*], or any person or persons on her behalf, shall not, nor will, at any time or times hereafter, commence or prosecute any suit or suits, in any court or courts, for compelling or obliging him the said [*husband*] to cohabit or live with her the said [*wife*], or to allow her any support, maintenance, or alimony whatsoever; *And* further that he the said [*trustee*], his heirs, executors, and administrators, shall and will, from time to time, and at all times hereafter, well and

BETWEEN HUSBAND AND WIFE.

Second witnessing part. The trustee covenants to indemnify the husband against the debts of the wife, or any claim for her maintainance,

or for cohabitation with her.

BETWEEN HUSBAND AND WIFE.

sufficiently save, defend, keep harmless, and indemnified the said [*husband*], his heirs, executors, and administrators, and his and their lands, tenements, goods, and chattels, of, from, and against all and every sum or sums of money, which shall become payable for the support, maintenance, lodging, and wearing apparel of the said [*wife*], during the said separation, and all and every the debt or debts, which shall or may hereafter be contracted by the said [*wife*], during such separation, and of, from, and against all claims and demands (if any) which she the said [*wife*] shall or may institute or make against or upon the said [*husband*], in contravention of the agreement hereinbefore entered into by him the said [*trustee*] as aforesaid, and of and from all actions, suits, claims, and demands whatever, for, or on account of the several matters as aforesaid, or any of them, or any matter or thing in any wise relating thereto. IN WITNESS, &c.

BETWEEN HUSBAND AND WIFE.

DEED *of* SEPARATION *between a Husband and Wife, where the Husband settled a sum of Stock in favor of his Wife and their Four Children, subject only to a Provision for his own Indemnity against any Debts his Wife might contract.*

THIS INDENTURE, made the day of ,

Parties.

BETWEEN [*husband*] of, &c. of the one part, and [*one of the trustees*] of, &c. and [*the other trustee*] of, &c. of the other part;

Recital of the agreement to separate, and the terms of the separation.

WHEREAS some unhappy differences have arisen between the said [*husband*] and [*wife*], and in consequence thereof, it hath been agreed that they should henceforth live separate and apart from each other; *And* upon the treaty for such separation, it was agreed that the said [*husband*] should allow the said [*wife*], during her life, to have the sole custody of her four children by him the said [*husband*], and that he the said [*husband*] should transfer into the names of the said [*trustees*], in the books of the Governor and Company of the Bank of England, the sum of pounds, three pounds per cent. consolidated bank annuities, to be held by them *Upon the trusts* and subject to

the powers and provisoes, hereinafter declared and contained concerning the same, for the benefit of the said [*wife*], and her said children; (*a*) AND WHEREAS in pursuance and part performance of the said agreement, the said [*husband*] hath this day transferred into the names of the said [*trustees*], in the said books of the Governor and Company of the Bank of England, the sum of pounds, three pounds per cent. bank annuities, and the same is now standing in their names in the said books, as they the said [*trustees*] do hereby respectively admit and acknowledge. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, *It is hereby agreed and declared* between and by the said parties to these presents, that the said [*trustees*], their executors, administrators, and assigns, shall and will stand and be possessed of, and interested in the said sum of pounds, three pounds per cent. consolidated bank annuities, which has been so transferred into the names of them the said [*trustees*] as aforesaid, and the dividends and annual produce thereof, *Upon the trusts* and in manner following (that is to say); *Upon trust* that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, during the joint lives of the said [*husband*] and [*wife*], receive and take the dividends and annual produce of the said sum of pounds, three pounds per cent. consolidated bank annuities, as the same shall become due, and do and shall, while the said [*wife*] shall suitably main-

BETWEEN HUSBAND AND WIFE.

that in part performance of agreement, husband has transferred to trustees —— pounds, three per cents.

Testatum.

Declaration that trustees shall be possessed thereof,

upon trust to receive the dividends,

and pay them to wife while

(*a*) If any covenants are to be entered into between the husband and trustee similar to those in the last deed, add:

"*And* that the said [*husband*] and [*trustee*] should covenant with each other in such manner as hereinafter is mentioned."

Or,

"*And* that the said [*husband*] and [*trustee*] should enter into the covenants hereinafter on their respective parts contained."

In the above case, such covenants were considered, from the character of the parties, and the cause of the separation to be unnecessary.

BETWEEN HUSBAND AND WIFE.

she shall maintain her children, pay her debts, and refrain from molesting her husband;

tain, educate, and support her said children, and pay and discharge the debts and engagements which she may enter into on her own behalf, or on the behalf of her said children, and refrain from molesting the said [*husband*], or making or preferring any claim or demand upon or against him, in respect of cohabitation or maintenance or alimony, pay, apply, and dispose of the same dividends, and annual produce, to such person or persons only, and for such intents and purposes only, as she the said [*wife*] shall, notwithstanding her coverture, by any writing or writings under her hand, from time to time direct or appoint; and in default of such direction or appointment, and subject thereto, into the proper hands of her the said [*wife*], for her own sole and separate use and benefit; *But* if the said [*wife*] shall neglect or refuse suitably to maintain, educate, and support her said children, or to pay and discharge such debts or engagements as she may enter into as aforesaid, or shall molest the said [*husband*], or make or prefer any claim or demand upon or against him the said [*husband*], either for cohabitation or maintenance or alimony; *Then*, and in any of the said cases, do and shall, during the remainder of the joint lives of the said [*husband*] and [*wife*], pay, apply, and dispose of the said dividends and annual produce of the said sum of pounds, three pounds per cent. consolidated bank annuities, in manner following (that is to say); in the first place, in indemnifying and saving harmless the said [*husband*], his executors and administrators, from all sums of money, losses, damages, costs, and expenses, which he or they shall pay, incur, or be put unto, by reason or in consequence of the said [*wife*] so neglecting or refusing to maintain, educate, and support her said children, or to pay and discharge her said debts and engagements as aforesaid, or of her making or preferring any such claim or demand upon or against him the said [*husband*], as hereinbefore mentioned; *And* in the next place, in maintaining, clothing, and supporting the said [*wife*], and maintaining, clothing, educating, and supporting her said children by the said [*husband*], in such manner as to the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, in the exercise of their, or his own discretion and judgment, shall appear reasonable and proper; *And* in case the said [*wife*]

but if she shall not do so, then

upon trust out of the said dividends, to indemnify the husband, and apply the residue for the maintenance of wife and children at the trustees' discretion.

and after the death of hus-

shall survive the said [*husband*], then do, and shall, during the remainder of the life of the said [*wife*], pay the said dividends and annual produce of the said sum of pounds, three pounds per cent. consolidated bank annuities to, or permit and authorise the same to be received by, the said [*wife*], or her assigns, for the maintenance and support of herself, and the suitable maintenance, education, and support of her said children by the said [*husband*]; *And* after the decease of the said [*wife*], the said sum of pounds, three pounds per cent. consolidated bank annuities, and the dividends and annual produce thereof, shall remain and be *In trust* for all and every, or such one, or more exclusively of the others or other of the said children of the said [*wife*], by the said [*husband*], with such provisions for their respective maintenance, education, and advancement, and at such age, day, or time, or respective ages, days, or times, and in such parts, shares, and proportions, and charged with such annual sum or sums of money, or limitations over, for the benefit of the other of the said children, or some or one of them, and upon such conditions, and with such restrictions, and in such manner as the said [*wife*], with the approbation in writing of the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall, notwithstanding her coverture, and whether she should be covert or sole, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto in writing, or any writing in the nature of, or purporting to be a will, to be by her signed and published, in the presence of, and attested by the like number of witnesses, direct, or appoint; *And* in default of such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, *In trust* for all and every of the said children of the said [*wife*], by the said [*husband*], who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age, or marry under that age, with the consent of her or their parent or parents, or guardian or guardians, for the time being, to be divided between,

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band, to pay the dividends to wife for her life, for herself and children.

Declaration that after the decease of the wife, the trust fund shall be in trust for the children, as the wife shall,

with the approbation of the trustees, appoint;

and in default of appointment, for all the children equally.

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or amongst such children, if more than one, in equal shares, as tenants in common; *And* if there shall be but one such child, then the whole to be, *In trust* for that one or only child; *But* no child taking under any appointment, to be made in exercise of the aforesaid power, shall be entitled to any share of the unappointed part of the said sum of pounds, three pounds per cent. consolidated bank annuities, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that after the decease of the said [*wife*], and until the whole of the said sum of pounds, three pounds per cent. consolidated bank annuities, shall become vested in such child or children as aforesaid, the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall receive the dividends and annual produce of the same, or of so much thereof as shall not for the time being have become vested, and shall apply the same dividends and annual produce, or so much thereof as they or he shall think fit, for or towards the maintenance and education of the children or child, for the time being entitled thereto in expectancy; *And* shall accumulate at compound interest, so much of the same dividends and annual produce as shall not for the time being be required for such maintenance and education as aforesaid, in their or his names or name, in any of the parliamentary stocks or public funds of Great Britain, or at interest upon government securities, or real securities in England or Wales, and shall alter and vary the said stocks, funds, and securities, for or into other stocks, funds, and securities of the like nature, as occasion shall require, or they or he shall think fit; *And* the accumulations which shall be so made, and the stocks, funds, and securities in or upon which the same shall be invested, shall belong to the person or persons who shall ultimately become entitled to the fund or funds from whence such accumulations shall have proceeded. PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties to these presents, that it shall be lawful for the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, during the life of the said [*wife*], with her consent in writing, and after her

Provision for maintenance during minority.

and for the accumulation of the surplus dividends.

Clause for the advancement of the children.

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decease then, at their, or his own discretion, to raise and apply for, or towards the advancement or preferment in the world of any of the said children of the said [*wife*], by the said [*husband*], any part not exceeding a moiety of his or her share, or expectant share, of and in the said sum of pounds, three pounds per cent. consolidated bank annuities, under the trusts hereinbefore declared concerning the same, notwithstanding such share or expectant share shall not then have become vested or payable, under or by virtue of the said trusts; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that if none of the said children of the said [*wife*], by the said [*husband*], shall become entitled to the said sum of pounds, three pounds per cent. consolidated bank annuities, under the trusts hereinbefore declared, then and in such case, and immediately after such failure of the said children as aforesaid, the said sum of pounds, three pounds per cent. consolidated bank annuities, or so much thereof as shall not have been applied or disposed of, under the trusts and provisions hereinbefore declared and contained, shall go, remain, and be *Upon* and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisions, agreements, and declarations, as the said [*wife*] shall, notwithstanding her coverture, and whether she shall be covert or sole, by any deed or deeds, or instrument or instruments in writing, to be by her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto in writing, or any writing in the nature of, or purporting to be a will, to be by her signed and published in the presence of, and attested by the like number of credible witnesses, from time to time, direct or appoint; *And* in default of such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, *In trust* for the person or persons who, under the statutes for the distribution of the estates of intestates, would be entitled to the personal estate of the said [*wife*], in case she, having survived the said [*husband*], had died possessed of the same intestate, and to be divided between or amongst the same persons, if more than one, in the shares and proportions, in which the same would be divisible amongst them, under, or between, or

Proviso, that if none of the children shall live to become entitled, the fund shall go as the wife shall appoint,

and in default of appointment, to her next of kin.

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by virtue of the said statute. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall and may, at the request, and by the direction in writing of the said [*wife*], during her life, and after her decease, at their or his own discretion, and of their or his own proper authority, convert the said sum of pounds, three pounds per cent. consolidated bank annuities, or any part or parts thereof into money, and lay out and invest the money arising thereby, in their or his names or name, in the purchase of some of the parliamentary stocks, or public funds of Great Britain, or at interest upon government securities, or real securities in England or Wales, and shall and may, at the like request, and by the like direction, or at the like discretion (as the case may be), alter and vary the said last mentioned stocks, funds, and securities, for or into other stocks, funds, and securities of a like nature, when and so often as occasion shall or may require; *And* that the stocks, funds, and securities for or into which the said sum of pounds, three pounds per cent. consolidated bank annuities, or any part or parts thereof, shall be converted or changed, and invested as aforesaid, and the interest, dividends, and annual produce thereof, shall be held upon the like trusts, and be subject to the like powers and provisoes, in every respect, as are hereinbefore expressed and contained of and concerning the said sum of pounds, three pounds per cent. consolidated bank annuities, and the dividends and annual produce thereof, or as near thereto as the deaths of parties and other circumstances will admit. PROVIDED ALWAYS, and it is hereby also agreed and declared between and by the said parties to these presents, that the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall and may, at the request, and by the direction in writing of the said [*wife*], during her life, lay out and invest all or any part of the said sum of pounds, three pounds per cent. consolidated bank annuities, or the stocks, funds, or securities, in or upon which the same shall or may for the time being be invested, or the produce thereof, or the produce of any lands and hereditaments, which shall be purchased therewith, as

Power to sell the stock, and invest the produce in other securities, and afterwards to change such securities.

Power to convert the trust fund into money, and lay it out in land, and to reconvert the land into money.

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hereinafter is mentioned, in the purchase of lands and hereditaments in England or Wales, and held either in fee simple, or for any long and absolute term of years, of which sixty years, at the least, shall at the time of such purchase remain unexpired, and shall and may, at the like request, and by the like direction, or after the decease of the said [*wife*], at their or his own discretion, and of their or his own authority, convert such lands and hereditaments into money by a sale thereof, and shall stand and be possessed of the money arising from such sale, upon the same or the like trusts, as are hereinbefore declared of the money which shall have been invested in the purchase of the lands and hereditaments for the time being sold, and shall and may, from time to time, until such sale, make such leases of the said lands and hereditaments at full and improved rents, for any term or number of years, not exceeding fourteen years, as the said [*wife*] shall require, or after her decease, the said trustee or trustees for the time being shall think fit; *And* do and shall in the mean time, and until such sale, pay and apply the rents and annual income of the lands and hereditaments which shall be so purchased, to the same person or persons, and in the same manner, to whom or in which the interest of the money to be invested in such purchases as aforesaid would have payable or applicable, in case such purchases had not been made; *And* do and shall in all other respects stand and be seised of and interested in the lands and hereditaments, which shall be so purchased from time to time as aforesaid, *Upon*, under, and subject to the same trusts, as if the said lands and hereditaments were personal estate, and so, and in such manner as that on a sale of the said lands and hereditaments, or any of them, the person or persons who shall become the purchaser or purchasers thereof, shall not be under any obligation to see to the application of the purchase money, or be answerable or accountable for the misapplication, or nonapplication of the same, or any part thereof. (*Usual clauses for enabling the* [wife] *to appoint new trustees, and for the indemnity of the trustees.*) (*b*) IN WITNESS, &c.

and until such reconversion, to make leases of the lands purchased.

Declaration that the lands purchased shall until resold, be deemed personal estate.

(*b*) See the next precedent, and Index, POWERS, APPOINTMENT of TRUSTEES.

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DEED OF SEPARATION *between a Husband and Wife, where the Husband agreed to secure to a Trustee for the separate use of the Wife, a Rent-charge during the Wife's Life; and agreed that any Real or Personal Property she might afterwards acquire should be held for her separate use, and be at her absolute disposal; And the Trustee on the behalf of the Wife covenanted to indemnify the Husband from the Debts the Wife might contract during the Separation, and to procure the Wife to Release her Dower in the Husband's Estates.*

THIS INDENTURE, made the day of in the year of the reign, &c. *And* in the year of our Lord, 18 , BETWEEN [*husband*] of, &c. Esquire, of the first part; [*wife*] of, &c. (the wife of the said [*husband*],) of the second part; and [*trustee*] of, &c. of the third part; WHEREAS the said [*husband*] is seised of, or well entitled to, for an estate of inheritance in fee simple in possession, the messuages or tenements, lands, and hereditaments in the first schedule hereunder written, or hereunto annexed, particularly described, with their appurtenances; AND WHEREAS the said [*husband*] is also seised of, or well entitled to, for an estate to him and his heirs, by copy of court roll, according to the customs of the manors of which the same are respectively holden, the several lands and hereditaments in the second schedule, hereunder written, or hereunto annexed, particularly described, with their appurtenances; AND WHEREAS by an indenture bearing date the day of , and made, or expressed to be made between [*the mother of the wife*] of, &c. of the one part, and [A. B.] of, &c. and [C. D.] of, &c. of the other part; divers leasehold hereditaments, therein particularly described, and mentioned to be situate and being in street, in the parish of , in the county of , and also a sum of pounds, new four pounds per

Parties.

Recites that the husband is seised of the freehold hereditaments mentioned in the first schedule;

and of the copyhold hereditaments mentioned in the second schedule;

that by an indenture, &c. certain leasehold premises, and a sum of new four pounds per cent annuities were settled in trust for the lady's mother for life, with

cent. bank annuities, were assigned to, or otherwise vested in the said [A. B.] and [C. D.] their executors, administrators, and assigns, *In trust* for the said [*mother*], during her life, and afterwards for such of her four children as should happen to survive her, and should then have attained, or should afterwards live to attain his, her, or their age or respective ages of twenty-one years, if more than one, in equal shares, as tenants in common, their respective executors, administrators, and assigns; *And* if there should be only one such child, then *In trust* for such one or only child; AND WHEREAS some differences and disputes have arisen, and still subsist between the said [*husband*] and [*wife*], and in consequence thereof it hath been agreed, that they should live separate and apart from each other; *And* that the said [*husband*] should enter into proper covenants to allow the said [*wife*] to live separate from him, and not to molest or annoy her; *And* that he should allow her for her support and maintenance, an annuity of pounds per annum, during her life, to be charged in the manner hereinafter mentioned, upon all, or a competent part of the freehold and copyhold hereditaments hereinbefore mentioned or referred to; *And* that he should forthwith enter into the covenants hereinafter in that behalf contained; *And* that all the clothes, wearing apparel, jewels, ornaments of the person, books, and other effects which belonged to the said [*wife*] before her marriage with the said [*husband*], or which are now used and enjoyed by her, or are reputed to belong to her, and also the share to which the said [*wife*], or the said [*husband*] in her right may become entitled, of and in the said leasehold hereditaments, and sum of pounds new four pounds per cent. bank annuities, comprised in and settled by the said hereinbefore recited indenture as aforesaid, and all such other estates, real and personal, as during the joint lives of the said [*husband*] and [*wife*] his wife, should descend or come to, or devolve upon, or be given, devised, or bequeathed to, or in trust for her the said [*wife*], or to, upon, or in trust for him the said [*husband*], in right of the said [*wife*] his wife, should and might be held and enjoyed, and disposed of by her the said [*wife*], for her own sole and separate use, and in such manner as she should

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remainder for her children who should survive her, in equal shares.

that the husband and wife have agreed on a separation, and come to the following arrangement.

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think fit, exclusively of the said [*husband*], and without being subject to his debts, controul, or intermeddling; *And* that the said [*husband*] should not be obliged to pay for the support, maintenance, lodging, or wearing apparel of the said [*wife*], or for any debt or debts to be contracted by her, on any account or pretence whatsoever, during the said separation; *And* that the said [*trustee*] should indemnify him the said [*husband*] from and against the same, and all claims and demands in respect thereof, in manner hereinafter mentioned; *And* it was, at the same time, agreed, that on the said annuity of pounds, so agreed to be allowed to the said [*wife*] as aforesaid, being effectually secured, the [*wife*] should release and give up all the right and title which she had or might have to dower, free-bench, or thirds, in the freehold or copyhold hereditaments, or the leasehold or personal property of which the said was then seised or possessed, or might thereafter be seised or possessed; *And* that the said [*trustee*] should enter into the covenants hereinafter contained, in regard to securing such release.

First witnessing part.

NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, on the behalf of the said [*husband*], he the said [*husband*], for himself, his heirs, executors, and administrators, doth hereby COVENANT, promise, and agree to and with the said [*trustee*] his executors and administrators, in manner following (that is to say); that notwithstanding the marriage which has been had and solemnized between him the said [*husband*], and the said [*wife*] his wife, it shall and may be lawful to and for the said [*wife*], from time to time, and at all times hereafter, to live separate and apart from him the said [*husband*], in such sort and manner as if she were sole and unmarried; *And* that he the said [*husband*] shall not nor will compel her to cohabit or live with him, by any ecclesiastical censures or proceeding, or otherwise howsoever; *And* that she the said [*wife*] shall be absolutely, and to all intents and purposes whatsoever, freed and discharged from the power, command, rule, restraint, authority, and government of him the said [*husband*]; *And* that he the said [*husband*] shall not, nor will at any time hereafter, for any cause, or under any pretence whatsoever, sue or prose-

The husband covenants with the trustee for the wife, that the wife may live separate from her husband, and that he will not molest her, or any person harbouring or receiving her.

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cute any person or persons for receiving, harbouring, protecting, or assisting the said [*wife*], or ill-treat, or use, or offer any violence, force, or restraint to the person of her the said [*wife*], or molest, interrupt, or disturb her in her way of living, or in her liberty or freedom of going to, or staying in such place or places, or with such person or persons, as she shall think fit. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*husband*], he the said [*husband*], for himself, his heirs, executors, and administrators, *Doth* hereby further COVENANT, promise, and agree with and to the said [*trustee*], his executors, administrators, and assigns, that he the said [*husband*], his heirs and assigns, and all persons who for the time being shall have or claim any estate, right, title, or interest in the said freehold and copyhold hereditaments, respectively mentioned and set forth in the said schedules hereunder written, or hereunto annexed, shall and will forthwith,(*a*) at the expense of the said [*husband*], his executors or administrators, by such deed or deeds, ways and means, as the counsel of the said [*trustee*], his executors, administrators, and assigns, shall advise, well and effectually grant unto the said [*trustee*], his executors, administrators, and assigns, one annuity or clear yearly rent charge, or annual sum of pounds of lawful money of Great Britain, to be paid and payable during the term of ninety-nine years, if the said [*wife*] shall so long live, and to be charged and chargeable upon, and yearly issuing out of all and singular the said freehold and copyhold hereditaments, respectively mentioned and set forth in the said schedules hereunder written, or hereunto annexed, with their appurtenances, and to be paid and payable by two equal half yearly payments, on the day of , and the day of , in every year, without any deduction or abatement whatsoever out of the same, or any part thereof, on account or in respect of any taxes, charges, assessments, payments, or impositions

Second witnessing part.

Husband covenants with the trustee to secure to him an annuity or yearly rent of —*l.* during the life of the wife, to be issuing out of and charged on the freehold and copyhold hereditaments mentioned in the schedules.

(*a*) It does not appear on the face of this precedent, why the husband did not grant the rent instead of covenanting to do so. It would have been better to have stated the reason for his merely entering into a covenant.

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already taxed, charged, assessed, or imposed, or to be hereafter taxed, charged, assessed, or imposed upon the same hereditaments, or on the said [*trustee*], his executors, administrators, or assigns, or any other person or persons, by authority of parliament, or otherwise howsoever; the first half yearly payment of the said annuity or yearly rent or sum of pounds, to be made on the day of , next ensuing the date of these presents; and if the said [*wife*] shall depart this life on any other day than one of the said half yearly days of payment, a proportional part of the said annuity or yearly rent or sum of pounds, to be paid to the said [*trustee*], his executors, administrators, or assigns, for the time which she shall have lived of the then current half year; *And* also shall and will, by the same or such other deed or deeds, ways or means, as the counsel of the said [*trustee*], his executors, administrators, or assigns shall advise, grant unto the said [*trustee*], his executors, administrators, and assigns, the usual powers and remedies of distress and entry, and detention of possession and perception of the rents and profits of the said hereditaments, when and in case the said annuity or yearly rent or sum of pounds, or any part thereof should be in arrear and unpaid; *And also* shall and will, by the same or such other deed or deeds, ways and means, as the counsel of the said [*trustee*], his executors, administrators, or assigns shall advise, well and effectually demise, surrender, or assure the said hereditaments, so to be charged as aforesaid, and their appurtenances, unto some person or persons, to be named and approved of by the said [*trustee*], his executors, administrators, or assigns, for a sufficient term of years, upon the usual trusts for the better and more effectually securing the regular payment of the said annuity or yearly rentcharge or sum of pounds, and such proportional part thereof as aforesaid, in case the same should become payable, and all costs and expenses which shall be occasioned by the nonpayment thereof respectively, or in executing the trusts of the said term; *And further*, that he the said [*husband*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*trustee*], his executors, administrators, or assigns,

and to grant the usual powers of entry, &c. for securing the same annuity or rent;

and to demise or otherwise assure the said hereditaments to a trustee for a sufficient term of years, in trust to raise the same annuity or rent.

and also to pay the said annuity or rent as the same shall become payable.

during the term of ninety-nine years, determinable as aforesaid, the said annuity or yearly rent or sum of pounds, clear of all deductions and reprisals whatsoever, as and when the same shall become due and payable, by virtue of and according to the true intent and meaning of these presents, and also such proportional part thereof as aforesaid, in case the same shall become payable. AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that the said [*trustee*], his executors, administrators, or assigns, shall stand and be possessed of, and interested in the said annuity or yearly rent or sum of pounds, hereby covenanted to be granted as aforesaid, upon the trusts, and subject to the provisoes hereinafter declared and contained concerning the same (that is to say); *Upon trust* that he the said [*trustee*], his executors, administrators, or assigns, do and shall pay, apply, and dispose of the same annuity or yearly rent or sum, as and when the same shall be received, to such person and persons only, and for such intents and purposes only, as the said [*wife*], notwithstanding her present or any future coverture, and as if she were sole and unmarried, shall from time to time, by any writing or writings, signed by her with her own hand, direct or appoint; but not so as to deprive herself of the benefit thereof by sale, mortgage, charge, or otherwise, in the way of anticipation; and in default of, and until such direction or appointment, into the proper hands of her the said [*wife*], for her sole and separate use and benefit, exclusively of her present or any future husband, and without being subject to his or their control, debts, interference, or engagements, and the receipt or receipts of the said [*wife*], or of such person or persons as she shall from time to time direct or appoint to receive the said annuity or yearly rent or sum of pounds, or any part thereof, shall, notwithstanding the present or any future coverture of the said [*wife*], be an effectual discharge or effectual discharges for the money in such receipt or receipts mentioned, and acknowledged to be received. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that notwithstanding the trusts hereinbefore declared and contained, it shall and may be

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Declaration that the trustee shall stand possessed of the annuity or yearly rent, In trust to pay the same to such person as the wife shall appoint, and in default of appointment, to the wife for her separate use.

Proviso that the trustee may, out of the annuity, indemnify himself against all loss

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he may sustain by breach of the engagements he has entered into on behalf of the wife.

lawful to and for the said [*trustee*], his executors, administrators, and assigns, to deduct and retain, or pay out of the said annuity or yearly rent or sum of pounds, hereinbefore secured and agreed to be granted as aforesaid, all such sums of money, losses, damages, costs, and expenses (if any) which he the said [*trustee*], his executors, administrators or assigns, shall or may incur, sustain, or be put unto, by reason or in consequence of the non-observance or non-performance of any of the agreements or engagements hereinafter entered into by the said [*trustee*], on the part of the said [*wife*] to be observed and performed (*b*). PROVIDED ALWAYS and it is hereby further agreed and declared, between and by the said parties to these presents, that the said annuity or yearly rent or sum of pounds, hereinbefore secured and agreed to be granted, in trust for the separate use and benefit of the said [*wife*] as aforesaid, shall be, and the said [*wife*] doth hereby accept the same, in full satisfaction for her annual and separate maintenance, and in lieu and satisfaction of all other provisions agreed to be made by the said [*husband*], upon or for the benefit, or in trust for her the said [*wife*], and also in bar of her dower or freebench at the common law or by custom, and of any distributive share to which, in case of the intestacy of the said [*husband*], she the said [*wife*], will, in the event of her surviving him, be entitled in, of, or from his personal estate. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*husband*], HE the said [*husband*], *Doth* hereby for himself, his heirs, executors, and administrators, also COVENANT, promise, and agree

Declaration that the annuity provided for the wife shall be in lieu of all other provisions agreed to be made for her, and in bar of dower and thirds.

Third witnessing part.

The husband covenants with the trustee that the clothes, jewels, &c. of

(*b*) For a proviso enabling the husband to retain out of the annuity any sums the trustee may owe him, through breach of any of the covenants entered into by the trustee, see *post*, p. 267. Such a proviso is more properly introduced where the annuity is secured by a personal covenant, than where it is secured by the grant of a rent charge; as in the former case, the party liable to pay the annuity will be the same party as is entitled to receive the money payable upon a breach of the trustee's covenants,—while, in the latter case, these parties may, by an alienation of the lands out of which the rent charge is payable, be different persons. It is better, therefore, in the last case to subject the rent to a trust to indemnify the husband.

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with and to the said [*trustee*], his executors, administrators, or assigns, that all the clothes, wearing apparel, jewels, ornaments of the person, books, and other effects, which belonged to the said [*wife*] prior to her marriage with the said [*husband*], or which are now used and enjoyed by her, or are reputed to belong to her; *And also*, the share to which the said [*wife*], or the said [*husband*] in her right, will, in case the said [*wife*] shall survive her mother, the said [*mother of the wife*], become absolutely entitled of and in the said leasehold hereditaments and premises, and sum of pounds, new four pounds per cent. bank annuities, comprised in and declared by the said hereinbefore recited indenture of the day of as aforesaid; *And also*, all and singular other the real and personal estate and effects which shall or may at any time or times hereafter, during the joint lives of them the said [*husband*] and [*wife*], descend or devolve upon, or be given, devised, or bequeathed to, or *In trust* for the said [*wife*], or upon, to, or for the said [*husband*] in her right, shall and may be absolutely held and enjoyed, and be disposed of by her the said [*wife*], for her sole, separate, and peculiar use and benefit, and in such manner as she shall, notwithstanding her said coverture, think fit and direct, exclusively and independently of the said [*husband*], and without being in any wise subject to his debts, controul, or intermeddling, and in like manner as if she the said [*wife*] were sole and unmarried; *And further*, that he the said [*husband*], his heirs, executors, and administrators, shall and will, at any time or times hereafter, upon every reasonable request to be made for that purpose, by and at the costs and charges of the person or persons requiring the same, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable act and acts, deed and deeds, thing and things, grants, demises, releases, surrenders, assignments, conveyances, and assurances in the law whatsoever, for the further and better confirming and corroborating these presents, and every clause, matter, and thing herein contained, and for effectuating the several purposes aforesaid, according to the true intent and meaning of these presents, as by the said [*trustee*], his execu-

the wife, and the share to which she may become entitled under the trusts of the before recited indenture, and all her future real and personal estate, shall be for her separate use, and at her own absolute disposal.

And for further assurance.

BETWEEN HUSBAND AND WIFE.

tors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably devised, or advised, and required; PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties to these presents, that the receipt or receipts of the said [*trustee*], his executors, administrators or assigns, or other the trustee or trustees for the time being of these presents, for any money payable to him or them by virtue hereof, shall effectually discharge the person or persons paying the same, from being answerable or accountable for the misapplication or nonapplication thereof, and from being liable to see to the application thereof: PROVIDED ALWAYS, and it is hereby further agreed and declared, between and by the said parties to these presents, that if the said [*trustee*], his executors or administrators, or any trustee or trustees to be appointed as hereinafter is mentioned, or the executors or administrators of any such trustee, shall happen to die, or be desirous of being discharged from, or refuse or decline, or become incapable to act in the trusts hereby in them respectively reposed as aforesaid before the said trusts shall be fully executed and performed, *Then* and in such case, and when and so often as the same shall happen, it shall and may be lawful to and for the said [*wife*], by any deed or deeds, or instrument or instruments in writing, to be by her sealed and delivered in the presence of, and attested by two or more credible witnesses, from time to time, to nominate, substitute, or appoint one or two other person or persons to be a trustee or trustees in the place or stead of the trustee or trustees so dying, or desiring to be discharged, or refusing or declining, or becoming incapable to act as aforesaid; *And* when and so often as any new trustee shall be so nominated and appointed as aforesaid, the trust estates, monies, and premises, shall be thereupon, with all convenient speed, conveyed, assigned, and transferred, in such sort and manner, and so as that the same shall and may be legally and effectually vested in the person or persons so to be appointed as aforesaid, either solely, or jointly with the surviving or continuing trustee or trustees, as occasion shall require, upon and for the trusts, intents, and purposes hereinbefore expressed and declared of and concerning the same; *And* that the

Clause making the trustees' receipts sufficient discharges.

Power to change, or appoint new trustees.

person or persons so to be appointed as aforesaid, shall have all the powers of the trustee or trustees, in whose place or stead he or they shall have been substituted; PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties to these presents, that the said [*trustee*] hereby appointed, and the trustee or trustees to be appointed as hereinbefore is mentioned, and each and every of them, and the executors, administrators, and assigns of them, each and every of them, shall be charged and chargeable respectively for such monies only as they respectively shall actually receive by virtue of the trusts hereby in them reposed, notwithstanding their or any of their giving or signing, or joining in giving or signing, any receipt or receipts, for the sake of conformity, and any one or more of them shall not be answerable or accountable for the other or others of them, or for any involuntary loss or losses; *And* that it shall and may be lawful for him and them, with and out of the monies which shall come to his or their hands, by virtue of the trusts aforesaid, to retain to, and reimburse himself and themselves respectively, and also to allow his or their co-trustee or co-trustees all costs, charges, damages, and expenses which he or they, or any of them, shall or may incur, sustain, expend, or be put unto, in or about the execution of the aforesaid trusts, or in relation thereunto; AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and performance of the said agreement, on the part of the said [*wife*] and the said [*trustee*], *And* in consideration of the covenants and agreements hereinbefore contained, on the part and behalf of the said [*husband*] to be observed and performed, *It* is hereby agreed and declared between and by the said parties hereto, *And* the said [*trustee*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*husband*], his executors and administrators, in manner following (that is to say); that the said [*husband*], his heirs, executors, and administrators, duly observing and performing the covenants and agreements hereinbefore contained on his and their part to be observed and performed, he the said [*trustee*], his heirs, executors, or administrators, shall and will well and suffi-

Clause for the indemnity of the trustees.

Fourth witnessing part.

The trustee covenants with the husband to indemnify him against the debts which the wife may hereafter contract.

BETWEEN HUSBAND AND WIFE.

ciently save, defend, keep harmless and indemnified, the said [*husband*], his heirs, executors, and administrators, and his and their lands, tenements, goods, and chattels, of, from, and against the payment of all and every the debt and debts which shall at any time hereafter during the said separation, be contracted by or on the account of the said [*wife*], for her lodging, clothing, maintenance, or support, or any other matter, cause, or thing whatsoever, and of, from, and against all actions, suits, claims, and demands for or on account of the same debt or debts, or any of them, or any matter or thing in anywise in relation thereto; *And also*, that she the said [*wife*], or any person or persons on her behalf and by her direction, or with her privity and consent, shall not nor will, at any time or times hereafter, commence or prosecute any suit or suits in any court or courts whatsoever, for compelling or obliging the said [*husband*] to cohabit or live with her the said [*wife*], or to allow her any support, maintenance, or alimony whatsoever; *And also*, that she the said [*wife*], her executors, or administrators, shall and will at any time or times hereafter, upon every reasonable request to be made for that purpose by, and at the costs and charges of the person or persons requiring the same, make, do, and execute, or cause to be made, done, and executed, all and every such lawful and reasonable act and acts, deed and deeds, thing and things, releases, assignments, devices, and assurances in the law whatsoever, for releasing, relinquishing, and extinguishing all the right, title, claim, and demand whatsoever, which she the said [*wife*], her executors or administrators, shall or may have in respect of any dower, free bench, thirds, or other customary estate or interest, to which the said [*wife*] may hereafter become entitled in the freehold, copyhold, and leasehold, and other personal estates, of which the said [*husband*] now is or at any time hereafter, during the life of the said [*wife*], may be seised, or possessed, or entitled, as by the said [*husband*], his heirs, executors, administrators, or assigns, or his, or their, or any of their counsel learned in the law, shall be reasonably devised, or advised, and required. IN WITNESS, &c.

That the wife shall not require her husband to live with her;

and that she shall, on request, release her dower, free bench, and thirds.

(Here add the schedule).

BETWEEN HUSBAND AND WIFE.

DEED *of* SEPARATION *between Husband and Wife, where the Husband secured an Annuity to a Trustee for the separate use of the Wife during the joint Lives of himself and his Wife, by his personal Covenant only; and assigned to the same Trustee, In Trust for the separate use of the Wife, certain Leasehold Premises and Furniture, belonging to her prior to her Marriage; and also her Wearing Apparel; with usual Covenants between the Husband and Trustee.* (A short form).

THIS INDENTURE, made the day of , 1820, between [*husband*] of, &c. of the first part, [*wife*], of, &c. (the wife of the said [*husband*]) of the second part, and [*trustee*] of, &c. of the third part; WHEREAS some unhappy disputes and differences having arisen between the said [*husband*] and [*wife*], they have consented and agreed to live separate and apart from each other; *And* it was agreed, that the said [*husband*] should pay for or towards the maintenance and support of the said [*wife*] the annual sum of pounds during the joint lives of them the said [*husband*] and [*wife*]; *And* that he should assign to the said [*trustee*], upon the trusts hereinafter declared, the leasehold premises hereinafter mentioned, and also all the household goods and furniture, wearing apparel, and other things, which are now in the custody or possession of the said [*wife*], and which belong to her or to the said [*husband*], *And* that the said [*husband*] and [*trustee*] should enter into the covenants hereinafter on their respective parts contained. Now THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement on the part of the said [*husband*], and in consideration of the covenants hereinafter contained on the part of the said [*trustee*], his executors and administrators, to be observed and performed: HE, the said [*husband*], doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*], his executors, administrators, and assigns, that he, the said

Parties.

Recites that the husband and wife have agreed to live separate;

and that it has been agreed that the husband should pay an annuity to a trustee for the wife, for her separate use during her life.

and assign to the trustee, upon the trusts after mentioned, certain leasehold premises, furniture, &c.

First witnessing part.

Husband covenants with the trustee to pay him an annuity,

In trust for the wife, during the joint lives of husband and wife;

BETWEEN HUSBAND AND WIFE.

[*husband*] shall and will, during the joint lives of himself and the said [*wife*], well and truly pay or cause to be paid unto the said [*trustee*], his executors, administrators, or assigns, at or in the common dining hall of the Inner Temple, London, between the hours of ten and twelve in the forenoon, one annuity or clear yearly sum of pounds, of lawful money of Great Britain, by four equal quarterly portions, on the day of , the day of , the day of , and the day of in every year, without any deduction or abatement out of the same, or any part thereof, for or in respect of any present or future taxes, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; *And* shall and will make the first quarterly payment thereof on the day of , now next ensuing; *And* also shall and will, in case the said [*wife*] shall happen to depart this life in the life time of him the said [*husband*], on any other than one of the quarterly days of payment hereinbefore mentioned, well and truly pay, or cause to be paid unto the said [*trustee*], his executors, administrators, or assigns, within one calendar month next after the decease of the said [*wife*], a proportional part of the said annuity or yearly sum of pounds for the time which shall have elapsed between the quarterly day of payment immediately preceding the decease of the said [*wife*], and the day of such decease. AND IT IS HEREBY AGREED AND DECLARED, that the said [*trustee*], his executors, administrators, and assigns, shall stand and be possessed of and interested in the said annuity or yearly sum of pounds, so covenanted to be paid to him and them as aforesaid, upon the trusts following (that is to say), *Upon trust* that he the said [*trustee*], his executors, administrators, or assigns, do and shall, with and out of the same, in the first place, retain and satisfy all such sum or sums of money, costs, charges, and expenses, as he or they shall have paid, incurred, or been put unto, in or about the execution of the trusts of these presents, or in consequence of the said [*trustee*] having entered into the covenants hereinafter contained, on his part to be observed and performed; *And* do and shall pay and apply the residue of the said annuity or yearly sum, as and when

and also, in case the wife shall die in her husband's life time, a proportionate part of the said annuity up to the day of her decease.

Declaration of trust of the annuity.

BETWEEN HUSBAND AND WIFE.

the same shall come to his or their hand or hands, to such person or persons only, and for such intents and purposes only, as the said [*wife*] shall from time to time, notwithstanding her coverture, by any writing or writings, signed with her own hand, direct or appoint, but not so as to deprive herself of the benefit thereof by sale, mortgage, charge, or otherwise, in the way of anticipation; *And* in default of, and until such direction and appointment, do and shall pay the same into the proper hands of her the said [*wife*], for her sole, separate, and exclusive use and benefit, and to be applied for or towards her maintenance and support: PROVIDED ALWAYS, and it is hereby expressly agreed and declared, that if by reason of the breach or nonperformance of the covenants hereinafter entered into by or on the part of the said [*trustee*], or any of them, there shall at any time be any sum or sums of money due and owing from the said [*husband*] to the said [*trustee*], his executors or administrators, it shall be lawful for the said [*husband*] to retain and deduct the same from and out of the said annuity or yearly sum of pounds, hereby secured, or such part or parts thereof, as shall afterwards become due: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*husband*], *And* for the consideration hereinbefore expressed, and also in consideration of the sum of ten shillings, of, &c. by the said [*trustee*] to the said [*husband*], paid at, &c., (the receipt whereof, &c.); HE, the said [*husband*], with the privity and approbation of the said [*wife*], (testified by her being a party to, and executing these presents), *Hath* granted, bargained, sold, and assigned, *And* by these presents, *Doth* grant, bargain, sell, and assign unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT messuage or tenement, or dwelling-house, situate, &c.; *And* all and singular other the premises (if any) which were comprised in a certain indenture of lease, bearing date the day of , and made or expressed to be made, between [A. B.] therein described, of the one part, and [C. D.], therein described, of the other part, and thereby demised to the said [C. D.], his executors, administrators, and assigns, for a term of

Proviso, enabling the husband to retain out of the annuity, any monies the trustee may owe him, through breach of the trustees' covenants.

Second witnessing part. The husband assigns to the trustee the leasehold premises.

BETWEEN HUSBAND AND WIFE.

years from thence next ensuing, at the yearly rent of pounds, payable quarterly, as therein mentioned, and under and subject to the covenants and agreements therein contained, (which said premises were afterwards assigned to, or otherwise became vested in [X. Y.], late of , deceased, and were by his last will and testament, in writing, bearing date, &c. given and bequeathed unto the said [*wife*], the wife of the said [*husband*]); *And* all the estate, right, title, interest, property, profit, claim and demand whatsoever, both at law and in equity, of him the said [*husband*], in, to, out of, or upon the same premises, and every part thereof; TO HAVE AND TO HOLD the said messuage or tenement, lands, and all and singular other the premises hereby firstly assigned, or intended so to be, and every part thereof, with their appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of years, at, under, and subject to the rent, covenants, conditions, and agreements, in the hereinbefore mentioned indenture of lease reserved and contained, and which, on the tenants', lessees', or assignees' part, ought henceforth to be paid, observed, and performed; *But* nevertheless, upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same (that is to say), *Upon* and for such trusts, intents, and purposes, as the said [*wife*] shall, from time to time, or at any time hereafter, notwithstanding her coverture, and whether covert or sole, by any deed or instrument in writing, to be by her sealed and delivered, in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil thereto in writing, or any writing in the nature of or purporting to be a will, to be by her signed, and published in the presence of, and attested by, the like number of witnesses, direct or appoint; *And* in default of and until such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, *Upon trust*, that he the said [*trustee*], his executors, administrators, and assigns, do and shall, during the life of the said [*wife*], receive and take the rents, issues, and profits

Habendum to the trustee for the remainder of the term, at the rent, and subject to the covenants,

and upon the trusts after mentioned; *viz.*

upon such trusts as the wife shall by deed or will appoint;

and in default of appointment,

upon trust to receive the rents and pay the same to the separate use of the wife, for her life;

of the said messuage or tenement, lands and premises, and pay and apply the same as and when the same shall be received, into the proper hands of the said [*wife*], for her own sole and separate use and benefit, exclusively of the said [*husband*], and without being in any manner subject to his debts, controul, interference, or engagements; *And* after the decease of the said [*wife*], *Upon this further trust,* that he the said [*trustee*], his heirs, administrators, and assigns, do and shall (subject and without prejudice to any appointment which shall have been made by the said [*wife*], in pursuance of the power hereinbefore for that purpose contained) absolutely sell and dispose of the said messuage or tenement, lands and premises, hereby firstly assigned, or intended so to be, and every part thereof, with their appurtenances, either together or in parcels, and either by public auction or private contract, to any person or persons who shall be willing to become the purchaser or purchasers of the same, for the best price or prices which can be reasonably had or obtained for the same; *And do* and *shall* stand possessed of the monies which shall arise from such sale or sale, (after deducting the costs and expenses of or attending the same,) *In trust* for the person or persons, who under the statute made for the distribution of the estates of intestates, would then be entitled to the personal estate and effects of the said [*wife*], in case the said [*wife*], having survived the said [*husband*], had died possessed of the same intestate, and to be divided between or amongst the said persons, if more than one, in the shares and proportions in which the same would be divisible between or amongst them, under or by virtue of the said statute. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*husband*], and for the consideration aforesaid, HE the said [*husband*], with the privity and approbation of the said [*wife*], (so testified as aforesaid), *Hath* granted, bargained, sold, and assigned, *And* by these presents *Doth* grant, bargain, sell, and assign unto the said [*trustee*], his executors, administrators, and assigns, ALL the household goods and furniture, linen, china, glass, books, wearing apparel, trinkets, ornaments of the person, and other effects

and after her decease, to sell the premises, and divide the produce amongst her next of kin.

Third witnessing part.

The husband assigns to the trustee the household goods and furniture, wearing apparel, &c.

BETWEEN HUSBAND AND WIFE.

and things which are now in the custody or possession of the said [*wife*], either as property belonging to her before her marriage, or as the property of him the said [*husband*],

Habendum, unto the trustee absolutely,

And all the right, title, interest, &c. To HAVE, HOLD, RECEIVE, and take the said household goods and furniture, linen, china, glass, books, wearing apparel, trinkets, effects, and all and singular other the premises hereby secondly assigned, or intended so to be, unto the said [*trustee*], his executors, administrators, and assigns, absolutely; *But* nevertheless upon the trusts following, (that is to say),

upon the trusts after-mentioned: *viz.*

Upon trust that he the said [*trustee*], his executors, administrators or assigns, do and shall permit and suffer the said [*wife*] to have, use, wear, and enjoy the same, for her own sole and separate use, and as her own separate property, and either by any writing or writings, or without, or by her last will and testament in writing, or any codicil thereto, or any writing in the nature of or purporting to be a will, to be by her signed and published in the presence of and attested by one or more witness or witnesses, to give away and dispose of the same to any person or persons whomsoever, and for any purpose or purposes whatsoever;

upon trust to permit the wife to enjoy the same, and dispose thereof as she shall, by writing, or without, think fit;

And after the decease of the said [*wife*], do and shall stand and be possessed of the same household goods and furniture, linen, china, glass, wearing apparel, trinkets, effects, and premises, or so much, and such part or parts thereof as shall not have been previously given away and disposed of by the said [*wife*] as aforesaid, *Upon* the same trusts as are hereinbefore declared of and concerning the said messuage or tenement, lands and premises, hereby firstly assigned, or intended so to be.

and subject thereto, upon the same trusts as are declared of the leasehold premises before assigned.

Third witnessing part.

AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreement, on the part of the said [*husband*], HE the said [*husband*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*], his executors and administrators, in manner following, (that is to say); that she the said wife shall and may, notwithstanding her coverture, live separate and apart from him the said [*husband*], and as if she were a feme sole and unmarried, and shall and may live and reside in such place or places, and in such manner as she shall think proper; *And* that he the said [*husband*]

The husband covenants with the trustee that the wife may live separate;

and that he the husband will not molest her;

BETWEEN HUSBAND AND WIFE.

shall not, nor will, at any time hereafter, require, or by any means whatever compel, or attempt to compel the said [*wife*] to cohabit and live with him the said [*husband*], or ill treat or use, or offer any violence or restraint to the person of the said [*wife*], or in any manner molest or disturb her in her way of living; *And further*, that he the said [*husband*] shall and will permit and suffer the said [*wife*], at any time hereafter, to carry on, manage, and conduct, for her own sole and separate use and benefit, and without being subject to his debts or interference, any trade or business whatsoever, either in her own name, or in the name or names of any one or more of her friends, or exercise her talents for her own benefit, in any other manner she may think fit; *And further*, that he the said [*husband*], his heirs, executors, and administrators, shall and will, at all times hereafter, at the request and expense of the said [*wife*], her executors or administrators, or of the said [*trustee*], his executors or administrators, and by such conveyances, assignments, and assurances, as counsel shall reasonably advise or require, convey and assign, or otherwise make over unto the said [*trustee*], his heirs, executors, and administrators, all the real and personal estate and effects which shall, at any time hereafter, during the joint lives of the said [*husband*] and [*wife*], be purchased, made, acquired, or obtained by, or given, devised, or bequeathed to the said [*wife*], or descend or devolve upon, or otherwise become vested in, or belong to the said [*wife*], or the said [*husband*] in her right; *To hold* the same unto the said [*trustee*], his heirs, executors, administrators, and assigns, according to the nature and quality thereof, upon and for such and the same trusts, intents, and purposes, as are hereinbefore expressed and declared of and concerning the said messuage or tenement, lands, and premises, hereinbefore firstly assigned, or intended so to be, or as near thereto as circumstances will admit of. AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and performance of the said recited agreement, on the part of the said [*trustee*], *And* in consideration of the premises, HE the said [*trustee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*husband*], his executors and adminis-

and that she the wife may, for her own separate benefit, engage in any trade she shall think proper;

and that the husband will secure to the wife, or her trustee, all the real and personal estate the wife may acquire at any time during the joint lives of herself and her husband.

Fourth witnessing part.

The trustee covenants with the husband,

BETWEEN HUSBAND AND WIFE.

trators, in manner following, (that is to say); that while the said [*husband*] and [*wife*] shall live separate and apart from each other, the said [*husband*] shall not be liable or obliged to pay for the maintenance, support, lodging, or clothing of the said [*wife*], or to pay any debt or debts which hath or have been already contracted by the said [*wife*], and is or are now due and unsatisfied, or any debt or debts which shall, at any time or times hereafter, during the said separation, be contracted by the said [*wife*]; *And* that he the said [*trustee*], his heirs, executors, or administrators, shall and will, at all times hereafter, save, defend, keep harmless, and indemnified the said [*husband*], his executors and administrators, and his and their estates and effects whatsoever and wheresoever, from and against all and every the debt or debts, as hath or have been, or shall be so contracted by the said [*wife*] as aforesaid, and from and against all actions, suits, claims, demands, losses, damages, costs, and expenses which he the said [*husband*], his heirs, executors, or administrators, shall or may be involved in, incur, sustain, pay, or be put unto, for or on account of the maintaining, supporting, lodging, and clothing of the said [*wife*], during such separation as aforesaid, or for or on account of any debt or debts, which hath or have been, or shall be so contracted by her the said [*wife*] as aforesaid, or any of them, or for or on account of any act, deed, matter, or thing whatsoever, in any wise relating thereto; *And* further, that the said [*wife*], or any person or persons on her behalf, or by her direction or procurement, shall not, nor will at any time hereafter, commence or prosecute any suit or suits in any court or courts whatsoever, for compelling the said [*husband*] to cohabit or live with her the said [*wife*], or to allow her any support, maintenance, or alimony whatsoever; *And* that he the said [*trustee*], his heirs, executors, or administrators, shall and will at all times hereafter save, defend, keep harmless and indemnified the said [*husband*], his heirs, executors, and administrators, and his and their estates and effects, from and against any such suit or suits, claims or demands, as last aforesaid; and all costs and expenses which shall be paid or incurred, for or on account of the same: PROVIDED ALWAYS, and it is hereby agreed and declared, that if a

that the husband shall not be obliged to pay for the maintenance of the wife, or pay any debts she may contract during the separation;

and that the said trustee will indemnify him therefrom;

and that the wife will not take any proceedings to compel the husband to live with her, or allow her any further provision for her support;

and that the trustee will indemnify the husband therefrom.

Proviso that on non-payment

quarter's payment of the said annuity or yearly sum of pounds, hereby secured, shall at any time be in arrear and unpaid for the space of six calendar months next after the same shall have been lawfully demanded, *Then* and in such case, and immediately upon the expiration of the said space of six calendar months, the covenants hereinbefore contained on the part of the said [*trustee*], his executors and administrators, to be observed and performed, shall absolutely cease, determine, and be void, to all intents and purposes whatsoever: PROVIDED ALWAYS, and it is hereby agreed and declared, that the receipt or receipts in writing of the said [*wife*], for any money payable to her by virtue of these presents, shall, notwithstanding her coverture, be an effectual discharge or effectual discharges for the money in such receipt or receipts expressed or acknowledged to be received, and that the receipt or receipts in writing, of the said [*trustee*], his executors, administrators, or assigns, for any monies payable to him or them by virtue of these presents, shall effectually discharge the person or persons paying the same from being obliged to see to the application, or from being answerable for the misapplication or nonapplication thereof; PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the said parties hereto, that it shall and may be lawful to and for the said [*trustee*], his executors and administrators, to retain and deduct out of the trust premises, or the monies which shall come to his or their hands by virtue of these presents, all such sums of money, costs, charges and expenses, as he or they shall have paid, incurred, or sustained, or been put unto, in or about the execution and performance of the trusts of these presents, or in consequence of the said [*trustee*] having entered into the covenants hereinbefore contained on his part to be observed and performed. IN WITNESS, &c.

payment of any part of the annuity for six months, the covenants on the part of the trustee shall cease and be void.

Agreement that the wife's receipt and the trustee's receipts shall be sufficient discharges.

Clause for the indemnity of the trustees.

BETWEEN HUSBAND AND WIFE.

DEED *of* SEPARATION *between a Husband and Wife, where it was agreed that the Trustees of their Marriage Settlement should from thenceforth pay a Portion of the Income of the Trust Fund to the Wife, and the Remainder to the Husband; but subject to Forfeiture in case the Wife or Husband should act contrary to the Articles of Separation; and where it was agreed that the Wife might engage in Business, and that the Property she should acquire should be for her separate Use, and at her absolute Disposal; and should, in default of Disposition by her, go to her real and personal Representatives as if she were unmarried.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*husband*] of, &c. of the first part; [*wife*] of, &c. of the second part; [*wife's mother*] of, &c. of the third part; [*one trustee*] of, &c. and [*other trustee*] of, &c. of the fourth part; WHEREAS [A. B.] late of, &c. esq. but now deceased, did by his last will and testament in writing, bearing date the day of , and duly proved in the court of , on the day of , direct that all his just debts and funeral and testamentary expenses should be paid as soon as conveniently might be after his decease, and did give and bequeath unto the several persons in his said will named, the several specific and pecuniary legacies therein mentioned, and did give and bequeath all the residue and remainder of his estate and effects, after the payment of his said debts, and funeral and testamentary expenses and legacies, unto his nephew the said [*husband*], (who was then an infant of the age of seventeen years, or thereabouts) his executors, administrators, and assigns, for his and their own absolute use and benefit; *And* the said testator appointed his friends [E. F.] of, &c. and [G. H.] of, &c. executors of

Recites the will of A. B., giving the residue of his personal estate to his nephew, the husband;

his said will: AND WHEREAS by an indenture of settlement bearing date the day of , and made or expressed to be made between the said [*husband*] of the first part; the said [*wife*] (then spinster) of the second part; and the said [*trustees*] of the third part; and made and executed previously to, and in contemplation of the marriage then intended, and shortly afterwards solemnized between the said [*husband*] and [*wife*], the said [*husband*] did, for the considerations therein mentioned, grant, bargain, sell, assign, and set over, unto the said [*trustees*], their executors, administrators, and assigns, all and singular the residuary personal estate and effects then late of the said [A. B.], and which by his said will was so given and bequeathed to the said [*husband*] as aforesaid, *To hold* the same unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts in the said indenture declared concerning the same, and hereinafter in part mentioned (that is to say); *In trust* for the said [*husband*], his executors, administrators, and assigns, until the said then intended marriage should be solemnized, and after the solemnization thereof, upon trust that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should ask for, demand, or receive, of and from the said [E. F.] and [G. H.], as such executors of the said [A. B.] as aforesaid, or other the person or persons liable to pay, deliver, or tranfer the same, the said residuary personal estate and effects thereby assigned; *And* in case of the non-payment, non-delivery, or non-transfer thereof, or of any part thereof, should take and adopt such measures and proceedings at law or in equity, for compelling and enforcing the payment, delivery, or transfer of the same, as to them or him should seem expedient and proper; *And* should, by sale or otherwise, as they or he should think advisable, sell and convert into money such part of the said residuary personal estate and effects (if any) as should not consist of money; *And* should lay out and invest the monies which should come to their or his hands or hand, under or by virtue of the said indenture, or the assignment therein contained, or so much of the same as should remain, after discharging the costs or expenses of, or attending the re-

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the settlement executed on the marriage of the husband and wife, whereby the residuary personal estate of A. B. was assigned to trustees;—

In trust for the husband till the marriage, and afterwards to receive, recover, and get in the same;

and lay out the produce in the funds:

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ceipt or recovery thereof, in their or his names or name, in any of the parliamentary stocks or public funds of Great Britain, or at interest on government securities or real securities in England or Wales, *And* should, with the consent in writing of the said [*husband*] and [*wife*], during their joint lives, and after the decease of either of them, then of the survivor of them, during his or her life, and after the decease of such survivor, at the discretion, and of the proper authority of the said trustees or trustee for the time being, to alter and vary the said stocks, funds, and securities, for or into other stocks, funds, and securities of the like nature, as occasion should require; *And* by the said indenture it was declared, that the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should stand possessed of the said trust monies, so to be laid out and invested as aforesaid, and the stocks, funds, and securities in or upon which the same should be invested, and the interest, dividends, and annual produce thereof, upon the trusts following (that is to say); *Upon trust* that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities to, or permit, and authorise the same to be received by, the said [*husband*] or his assigns, during his life, and after his decease, to or by the said [*wife*] or her assigns, during her life; and after the decease of the survivor of them the said [*husband*] and [*wife*], upon the several trusts in the said indenture mentioned; *And* by the said indenture it was declared, that the receipt or receipts in writing of the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should be an effectual discharge or effectual discharges for all monies which should be payable to them or him by virtue of the same indenture; *And* that they or he should and might, at their or his own discretion, adjust, compromise, and settle all accounts, reckonings, disputes, transactions, matters, and things which in any manner related to or concerned the said estate and effects thereby assigned, or any part thereof; *And* that whatsoever they or he might do in or about the premises, should be binding

and stand possessed thereof

in trust to pay dividends, &c. to husband for life;

and afterwards as in the indenture is mentioned;

with power to settle accounts.

and conclusive upon or against him the said [*husband*], his executors and administrators, and all persons and person whomsoever, claiming, or to claim, by, from, or under him, them, or any of them: AND WHEREAS some time in or about the month of , the said [E. F.] and [G. H.], as such executors as aforesaid, transferred into the names of the said [*trustees*], as trustees of the said hereinbefore recited indenture, in the books of the governor and company of the Bank of England, the sum of pounds, new four pounds per cent annuities, as they the said [*trustees*] do hereby respectively testify and acknowledge: AND WHEREAS some time on or about the day of , all the accounts, affairs, and concerns of or relating to the estate and effects late of the said [A. B.], were finally wound up, adjusted, and settled between the said [E. F.] and [G. H.], as such executors as aforesaid, and the said [*husband*], and the said [*trustees*], as such trustees as hereinbefore mentioned; *And* the balance then in the hands of the said [E. F.] and [G. H.], as such executors as aforesaid, and which amounted to the sum of pounds sterling, was thereupon paid over to the said [*trustees*], as trustees of the said hereinbefore recited indenture, as they the said [*trustees*] do hereby admit and acknowledge: AND WHEREAS the said sum of pounds has been since advanced and lent to [X. Y.], of , in the county of , on the security of a mortgage of a freehold estate at , in the same county: AND WHEREAS there is no issue of the said marriage between the said [*husband*] and [*wife*] (*a*); AND WHEREAS some unhappy differences have lately arisen and still subsist between the said [*husband*] and [*wife*], and in consequence thereof it hath been agreed, that they should live separate and apart from each other; *And* that the said [*husband*] should make and enter into the declaration of trust and covenants hereinafter on his part contained; *And* that in consideration thereof, the said [*wife's mother*] should covenant for the indemnity of the said

Recites that on the —day of—, a sum of — *l.* New 4-per cents was transferred by the executors to the trustees of the settlement:

that all the executorship affairs have been settled, and the balance paid over to the trustees;

that they have since lent such balance to X.Y. on mortgage;

that there is no issue of the marriage;

that differences have arisen, — agreement to separate.

(*a*) If there is any child of the marriage, recite the fact as follows:

"AND WHEREAS there is issue of the marriage between the said [*husband*] and [*wife*], one only child, namely [A.]"

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[*husband*], in such manner as hereinafter is mentioned (*b*). NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement on the part of the said [*husband*], and in consideration of the covenant hereinafter contained on the part of the said [*wife's mother*], HE the said [*husband*], with the privity and approbation of the said [*wife*], and [*trustees*], (testified by their respectively being parties to, and sealing and delivering these presents), *Doth* hereby declare and agree with and to the said [*trustees*], their executors, administrators, and assigns, that they the said [*trustees*], their executors, administrators, and assigns, shall from henceforth, during the remainder of the joint lives of them the said [*husband*] and [*wife*], pay, apply, and dispose of the interest, dividends, and annual produce of the trust monies, stocks, funds, and securities for the time being, subject to the trusts of the hereinbefore recited indenture, in manner following, (that is to say); As to, for, and concerning five equal eighth parts or shares thereof, upon trust that they the said [*trustees*] or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall pay the same unto the said [*husband*], or his assigns, so long as he the said [*husband*] shall duly observe and perform the several covenants and agreements hereinafter contained, on his part to be observed and performed; but if the said [*husband*] shall at any time infringe, violate, or act contrary to the said covenants and agreements, or any of them, then do and shall in the mean time, and until the said covenants and agreements shall be duly observed and performed according to the true intent and meaning thereof, pay and apply the said five equal eighth parts or shares of and in the aforesaid interest, dividends, and annual produce, in like manner, for the benefit of the said [*wife*] as is hereinafter mentioned, with respect to the other and remaining three equal eighth parts or shares of and in the same interest, dividends, and annual produce; *And* as to, for, and concerning the said other and remaining three equal eighth parts or shares

First witnessing part. Declaration of trust, of the dividends of the trust fund during the husband's life.

As to five-eighths for husband,

and as to three eighths for wife;

(*b*) It is most common to set out the arrangement or agreement very fully,—as in pages 241, 242, 255, and 256; but it is not necessary to do so.

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of and in the said interest, dividends, and annual produce, upon trust, that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall pay the same into the proper hands of the said [*wife*], for her own sole and separate use and benefit exclusively, and independently of the said [*husband*], and without being subject to his controul, interference, or engagements, so long as she the said [*wife*] shall duly observe and perform the several stipulations and agreements hereinafter entered into by the said [*wife's mother*], on the part of the said [*wife*] to be observed and performed; but if the said [*wife*] shall at any time violate or act contrary to the said last mentioned stipulations and agreements, or any of them, then do and shall in the mean time, and until the same shall be duly observed and performed, according to the true intent and meaning thereof, pay the said three equal eighth parts or shares of and in the aforesaid interest, dividends, and annual produce, unto the said [*husband*] or his assigns, in like manner as is hereinbefore mentioned, with respect to the said five equal eighth parts or shares of and in the same interest, dividends, and annual produce, under the trusts hereinbefore firstly declared: PROVIDED ALWAYS, and it is hereby agreed and declared, that if it shall at any time happen, that neither of them the said [*husband*] and [*wife*] shall, under the trusts hereinbefore declared, be entitled to the aforesaid interest, dividends, and annual produce, the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall, during such period as last aforesaid, accumulate the said interest, dividends, and annual produce, by way of compound interest, in their or his names or name, in any of the stocks, funds, or securities hereinbefore mentioned, and shall and may, at their or his own discretion, alter and vary the said stocks, funds, or securities, for or into other stocks, funds, and securities of the like nature; *And* that the accumulations which shall be so made, and the stocks, funds, and securities, in or upon which the same shall be invested, and the interest, dividends, and annual produce thereof, shall be held upon the same trusts, and subject to the same provisoes, declarations, and agreements, as in and

subject to forfeiture, on violating the articles of separation.

Proviso for accumulation, if both parties violate the separation agreements.

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by the said hereinbefore recited indenture are expressed and declared of and concerning the trust monies, stocks, funds, and securities from whence such accumulation shall have proceeded, and the interest, dividends, and annual produce thereof: PROVIDED ALWAYS and it is hereby agreed and declared, between and by the parties hereto, that if the said [*wife*] shall at any time violate or act contrary to the stipulations and agreements hereinafter entered into by the said [*wife's mother*], on the part of the said [*wife*] to be observed and performed, and in consequence thereof, the said [*wife's mother*] shall pay, incur, sustain, or be put unto, any sum or sums of money, losses, costs, charges, or expenses, under or by virtue of the said stipulations and agreements, the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall and may, with and out of the interest, dividends, and annual produce which would, for the time being, be payable to the said [*wife*], under the trusts aforesaid, in case she had not violated or acted contrary to the said stipulations and agreements, pay and satisfy, or make good, so far as the same will extend, the said sum or sums of money, losses, costs, charges, and expenses, which the said [*wife's mother*] shall have so paid, incurred, sustained, or been put unto as aforesaid, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding (*c*). AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*husband*], and for the considerations hereinbefore mentioned, HE the said [*husband*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors and administrators, in manner following, (that is to say); that she the said [*wife*] shall and may, notwithstanding her coverture, live separate and apart from him the said [*husband*], as if she were a feme sole and unmarried; *And* that she the said [*wife*] shall from henceforth be freed and

Power to indemnify the wife's mother against her covenant of indemnity to the husband, so far as the wife's interest in the dividends will extend.

Second witnessing part. The husband covenants with the trustees that the wife may live separate;

and be free from his controul;

(*c*) If the trustees of the separation deed had not been the same persons as were trustees of the marriage settlements, clauses should have been here introduced for changing the trustees, and for their indemnity.

discharged from the power, command, restraint, controul, authority, and government of him the said [*husband*], and shall and may live and reside in such place or places, and in such manner, as to her shall from time to time seem meet(*d*); *And* that he the [*husband*] shall not nor will molest or disturb her the said [*wife*] in her manner of living, and shall not nor will at any time or times hereafter, require, or by ecclesiastical censures, or by taking out any process, or commencing or instituting any suit in the spiritual courts, or by any other means whatsoever, compel her the said [*wife*] to cohabit or live with him the said [*husband*], or use any force, violence, or restraint, to the person of her the said [*wife*]; but that she the said [*wife*] shall and may, in all things, live as if she were a feme sole and unmarried, without any restraint or coercion of or by him the said [*husband*], or of or by any other person or persons acting under his authority, or with his privity or consent (*e*); *And* further, that he the said [*husband*] shall and will permit and suffer the said [*wife*], at any time or times hereafter, to carry on and conduct for her sole and separate use and benefit, and without being subject to his debts, controul, interference, or engagements, any trade or business whatsoever, in the name of the said [*wife's mother*], or in the name or names of any friend or friends of the said [*wife*]; *And* that he the said [*husband*] his executors and administrators, shall and will permit and suffer the said [*wife*] to have, use, wear, retain, and enjoy, to and for her own separate use, and as her own separate property, and either by any writing or writings, or without, or by her last will and testament in writing, or by any writing in the nature of, or purporting to be a will, or any

and that he will not molest her;

but that she may live as a feme sole,

and may carry on any trade or business;

and may enjoy her wearing apparel, &c. for her separate use;

(*d*) This will not authorise her to live in a state of adultery. *Sullivan* v. *Sullivan*, 2 Addams, 299. *Richardson* v. *Richardson*, 1 Haggard, 9.

(*e*) If there is a child, and the wife is to be allowed the custody of it, say:

"*And* that the said [*child*] shall and may at all times hereafter be under the sole care and management, protection and controul of the said [*wife*]."

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codicil or codicils thereto, to be by her signed and published in the presence of, and attested by one or more witness or witnesses, to give away and dispose of, to any person or persons whomsoever, and for any purpose or purposes whatsoever, all or any of the household goods, furniture, plate, linen, china, books, wines, liquors, provisions, and other articles and things which are now in the custody or possession of the said [*wife*], and also all or any of the profits from trade, monies, savings, accumulations, goods, and chattels whatsoever, which shall or may hereafter be received, made, acquired, or obtained by, or be given or bequeathed to the said [*wife*], or otherwise come into her hands, custody, or possession, or become vested in or payable to her; *And* that the receipt or receipts of the said [*wife*] for any rents, issues, and profits, monies, goods, or personal estate and effects to which the said [*wife*], or the said [*husband*] in her right may, at any time or times hereafter become entitled, or of any person or persons whom she shall direct or appoint to receive the same, shall be a good and effectual discharge, or good and effectual discharges, to the person or persons paying or delivering the same; *And* further, that after the decease of the said [*wife*], and in default of any such direction or appointment by her of the same as aforesaid, and subject thereto, the said [*husband*], his executors or administrators, shall and will permit and suffer the said household goods and furniture, profits of trade, monies, savings, accumulations, and other personal estate and effects hereby placed at the absolute disposal of the said [*wife*] as aforesaid, to be distributed between or amongst the persons who under the statutes made for the distribution of the estates of intestates, would then be entitled to the personal estate and effects of the said [*wife*], in case she the said [*wife*], having survived the said [*husband*], had died possessed of the same intestate, and to be divided between or amongst the same persons respectively, if more than one, in the shares and proportions in which the same would under or by virtue of the said statutes, be divisible between or amongst the same persons respectively; *And* that if the said [*wife*] shall die testate in the life time of the said [*husband*], *Then* and in such case, he the said [*hus-*

that her receipts shall be sufficient discharges;

that her personal estate shall be divided between her next of kin, if she dies without disposing of it;

band], his executors or administrators, shall and will permit and suffer the will and codicil or codicils of the said [*wife*] to be proved by the executor or executors therein mentioned; *And* that if the said [*wife*] shall die intestate in the life-time of the said [*husband*], *Then* and in such case, he the said [*husband*], his executors or administrators, shall and will permit and suffer the administration of the personal estate and effects of the said [*wife*] to be granted to the person or persons who would be entitled to administer to her in case she the said [*wife*] had survived the said [*husband*]; *And* that he the said [*husband*], his executors and administrators, and all other persons claiming under him, shall and will at all times hereafter, upon every request to be made for that purpose, by and at the proper costs and charges of the said [*wife*], her executors, administrators, or assigns, or of the said [*trustees*], their executors, administrators, or assigns, make, do, and execute, or cause to be made, done, and executed, all such acts, deeds, assignments, and assurances, as counsel shall reasonably advise and require, for the better and more effectually securing the said [*wife*], her appointees, executors, administrators, and assigns, the said household goods and furniture, profits of trade, monies, accumulations, and other personal estate and effects, hereby covenanted and agreed to be for the separate use and at the absolute disposal of the said [*wife*] as aforesaid, and for otherwise effectuating all or any of the purposes hereinbefore mentioned; *And* that in case any real estate shall at any time hereafter, during the joint lives of them the said [*husband*] and [*wife*], happen to descend or devolve upon, or be given or devised to, or in trust for the said [*wife*], or upon, to, or for the said [*husband*] and [*wife*], in right of the said [*wife*], *Then* and in such case, and so often as the same shall happen, he the said [*husband*] shall and will, at the request and expense of the said [*wife*], make, do, and execute, or join in making, doing, and executing all such conveyances, assurances, acts, deeds, matters and things whatsoever, for effectually conveying and settling the same real estate on such person or persons, for such purpose or purposes, and in such

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that her will may be proved by her executor;

that if she dies intestate, administration shall be granted to her next of kin;

that husband will execute further assurances;

that if wife becomes entitled to any real estate, husband will join in conveying it as she may direct;

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manner as the said [*wife*] shall, notwithstanding her coverture, by any deed or deeds, or instrument or instruments in writing, to be by her sealed and delivered in the presence of and attested by two or more witnesses, or by her last will and testament in writing, or any writing in the nature of or purporting to be a will, or any codicil or codicils thereto, to be by her signed and published in the presence of and attested by three or more witnesses, from time to time direct or appoint, as by the said [*wife*], or her counsel in the law, shall be reasonably advised and required;

and that if wife dies before such conveyance, he will release his curtesy;

And that if she the said [*wife*] shall happen to die in the life time of the said [*husband*] before any such conveyance as aforesaid shall be made, *Then* and in such case he the said [*husband*] shall not nor will claim any estate to which he may be entitled by the curtesy of England in any of the lands and hereditaments of the said [*wife*], and shall and will, at the request and expense of the heir of the said [*wife*], release and relinquish in favor of such heir all the right and title of him the said [*husband*] to such estate; *And further,* that in case the said [*wife*] shall happen to survive him the said [*husband*], and shall at the time of his decease be living separate and apart from him, she the said [*wife*] shall and may have and claim her

that wife shall have dower, notwithstanding the separation.

dower and free bench in and out of the freehold and (*f*) copyhold estates of which the said [*husband*] now is or at any time hereafter may be solely seised, for an estate of in-

(*f*) In a late case, where, in a separation deed it was provided, that if the wife survived the husband, and was then living separate and apart from him, she should be entitled to her dower and thirds of all the real and personal estate of which the husband should die seised or possessed, a claim was set up by the wife after the death of the husband, to such a share of the personal estate of the husband as she would have been entitled to under the statute of distributions, if he had died intestate, on the ground that the proviso amounted to a covenant to leave her such a share; but it was held, that the clause could only mean, that the wife living separate should stand in the same situation, in reference to dower and thirds, as if she was not living separate, and that it could not have been intended, that it should interfere with the husband's power of testamentary disposition. *Cochran* v. *Graham*, 19 Ves. 63; and see the cases of *Fortescue* v. *Hennah*, 19 Ves. 67; *Needham* v. *Kirkman*, 3 B. & A. 551; *Tayleur* v. *Dickenson*, Russ. 521.

heritance in possession, in like manner as if the said [*wife*] were living with him at the time of his decease, the provision hereby made for the said [*wife*], or any other matter or thing herein contained, or to be inferred, to the contrary thereof in anywise notwithstanding (*g*). AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement on the part of the said [*wife's mother*], and in consideration of the covenants and agreements hereinbefore contained on the part of the said [*husband*], SHE the said [*wife's mother*], *Doth* hereby for herself, her heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*husband*], his executors and administrators, in manner following (that is to say); That he the said [*husband*] well and truly observing and performing all and singular the covenants and agreements hereinbefore contained on his part to be observed and performed, according to the true intent and meaning thereof, and of these presents, he the said [*husband*] shall not, during the said separation, be liable or obliged to pay for the maintenance, support, lodging, and wearing apparel of the said [*wife*], or to pay any debt or debts which have or hath already been contracted by the said [*wife*], and which are now due and unsatisfied, or any debt or debts which shall at any time or times hereafter, during the said separation, be contracted by the said [*wife*], and that she the said [*wife's mother*], her heirs, executors, and administrators, shall and will at all times hereafter, save, defend, keep harmless and indemnified the said [*husband*], his heirs, executors, and administrators, and every of them, from and against all actions, suits, claims, demands, losses, costs, charges, and expenses whatsoever, which he the said [*husband*], his heirs, executors, or administrators, or any of them, shall or may defend, incur, sustain, or be put unto, or become liable or subject to, for or by reason or on account of the

Third witnessing part.

The wife's mother covenants with the husband;

that he shall not be obliged to maintain his wife, or pay her debts, and to indemnify him therefrom;

(*g*) If the trustees of the separation deed had not been the same parties as were trustees of the settlement, and the dividends of the trust funds subject to the settlement, had consequently been assigned to the trustees of the separation deed, it would have been proper here to have introduced a covenant from the husband, that he had done no act to charge or incumber his life-interest in the dividends.

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maintaining, supporting, lodging, and clothing of the said [*wife*] during such separation as aforesaid, or for or by reason or on account of any debt or debts which hath or have been or shall be so contracted by the said [*wife*] as aforesaid, or for or by reason or on account of any act, deed, matter, or thing whatsoever, in anywise relating thereto respectively; *And further*, that she the said [*wife*], or any person or persons on her behalf, shall not nor will at any time or times hereafter commence or prosecute any suit or suits in any court or courts whatsoever, for compelling or obliging the said [*husband*] to cohabit or live with her the said [*wife*], or to allow her any support, maintenance, or alimony whatsoever, save and except the maintenance hereinbefore provided for her as aforesaid; *And* that she the said [*wife's mother*], her heirs, executors, or administrators, shall and will, &c. (*indemnify the husband therefrom, as in p.* 264, *and* 272): PROVIDED ALWAYS, and it is hereby expressly agreed and declared, that if the said [*husband*] and [*wife*], shall at any time hereafter consent and agree to cohabit and live together again, and shall actually so cohabit and live together, *Then* and in such case, and immediately thereupon, these presents, and every trust, clause, covenant, agreement, stipulation, matter and thing herein contained, shall absolutely cease, determine, and be void, to all intents, effects, constructions, and purposes whatsoever. IN WITNESS, &c.

and that the wife shall not sue for restoration of conjugal rights;

proviso for avoiding the deed, if the parties cohabit again.

DEED OF COVENANT FROM A TRUSTEE OF A WIFE TO INDEMNIFY HER HUSBAND.

DEED *of* COVENANT *from a Trustee for the Wife to Indemnify the Husband against any Debts she may contract, and against any Claim by her for Cohabitation or Alimony: in consideration of the Provision made for the Separate Maintenance of the Wife, by an Indenture of even date* (*a*).

THIS INDENTURE, made the day of , BETWEEN [*trustee*] of, &c. of the first part; [*wife*] of, &c. the wife of [*husband*] of, &c. of the second part; and the said [*husband*] of the third part. WHEREAS some unhappy differences have arisen between the said [*husband*] and [*wife*] his wife, and in consequence thereof it hath been agreed that they should from henceforth live separate and apart from each other; *And* that the said [*husband*] should immediately pay to the said [*wife*] for her separate use, the sum of pounds, and deliver over to her, as her own sole and separate property, all the clothes, wearing apparel, and ornaments of the person, now usually used and enjoyed by her, and that he should secure to the said [*trustee*], during the life of the said [*wife*], an annuity or yearly rent-charge of pounds, to be chargeable upon and payable out of certain messuages or tenements, lands, hereditaments, and premises belonging to him the said [*husband*], situate at , in the county of , to be held by the said [*trustee*] *In trust* for the sole and separate use of the said [*wife*]; *And* that he should also secure to the said [*wife*] in the

Parties.

Recites the agreement to separate, and arrangement thereon.

(*a*) Where the settlement for the separate maintenance of the wife will be necessarily long, it is advisable to take the covenants from the trustee, for the indemnity of the husband by a separate deed, as such deed of covenant will be attended with less expense than having a counterpart of the settlement for the husband.

DEED OF COVENANT FROM A TRUSTEE OF A WIFE TO INDEMNIFY HER HUSBAND.

event of her surviving him, the payment of a sum of pounds, within six calendar months next after the decease of him the said [*husband*], by the creation of a term of years, in the messuages or tenements, lands, hereditaments, and premises hereinbefore mentioned, upon the usual trusts for raising the same; *And* that he should enter into such covenants with the said [*trustee*] for permitting the said [*wife*] to live separate and apart from him the said [*husband*], and free from his control and molestation, as the counsel of the said [*wife*], or of the said [*trustee*], should reasonably require; *And* that the said [*trustee*] should covenant with the said [*husband*] in such manner as hereinafter is mentioned: AND WHEREAS in pursuance and part performance of the said agreement, the said [*husband*] hath this day, with the privity of the said [*trustee*], (testified by his being a party to and sealing and delivering these presents,) paid unto the said [*wife*] the sum of pounds, for her sole and separate use, as they the said [*wife*] and [*trustee*] do hereby respectively admit and acknowledge: AND WHEREAS in pursuance and further performance of the said agreement, the said [*husband*] hath this day, with the like privity of the said [*trustee*], (so testified as aforesaid,) delivered up to the said [*wife*] all and singular the clothes, wearing apparel, and ornaments of the person hereinbefore mentioned, as they the said [*wife*] and [*trustee*] do hereby also respectively admit and acknowledge: AND WHEREAS by an indenture (*b*) bearing even date with these presents, and made between the said [*husband*], of the first part; the said [*wife*], of the second part; and the said [*trustee*], of the third part; the said [*husband*] has, in pursuance of the therein and hereinbefore mentioned agreement, given, granted, and confirmed unto the said [*trustee*], his executors, administrators, and assigns, one annuity or clear yearly rent or sum of pounds, of lawful money of Great Britain, during the life of the said [*wife*], to be charged and chargeable upon, and yearly issuing out of the messuages

That the husband has paid the wife —— *l.* for her own use;

and delivered to her her clothes, &c.;

and that by an indenture of even date, husband has granted to a trustee for wife during her life, a rent charge of —— *l.*

(*b*) The next precedent.

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or tenements, lands, hereditaments, and premises hereinbefore mentioned or referred to, and therein particularly described, and their appurtenances, and to be paid and payable by four equal quarterly portions, on the day of , the day of , the day of , and the day of , in every year, without any deduction or abatement whatsoever, *Together* with a proportionate part of the said annuity or yearly rent or sum of pounds, up to the day of the decease of the said [*wife*], in case she should happen to depart this life on any other than one of the quarterly days of payment therein and hereinbefore mentioned; *And* by the said indenture, the said [*husband*] has given and granted unto the said [*trustee*], his executors, administrators, and assigns, the usual powers of entry and distress, and detention of possession, and perception of rents and profits of the said hereditaments and premises, for recovering and enforcing payment of the said annuity or yearly rent or sum of pounds, when and in case the same or any part thereof should be in arrear; *And* by the said indenture the said [*husband*] has granted, bargained, sold, and demised unto the said [*trustee*], his executors, administrators, and assigns, ALL that and those the said messuages or tenements, lands, hereditaments, and premises thereinbefore described, and thereby charged with the payment of the said annuity or yearly rent or sum of pounds as aforesaid, and their appurtenances, *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, for and during and unto the full end and term of one thousand years, to be computed from the day of the date of the said indenture, and thence next ensuing, and fully to be complete and ended, without impeachment of waste, upon the trusts in the said indenture declared concerning the same, and hereinafter in part mentioned (that is to say); *Upon trust* that he the said [*trustee*], his executors, administrators, and assigns, do and shall permit and suffer the said [*husband*], his heirs or assigns, to receive the rents, issues, and profits of the said messuages or tenements, lands, hereditaments, and premises, until the said annuity or yearly rent, or sum of pounds, or some part thereof,

and granted to him the usual powers of entry and distress.

and demised the premises to a trustee for 1000 years, for raising the same.

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shall be in arrear for the space of twenty-one days; *And* when and so often as the same or any part thereof shall be in arrear, then do and shall by and out of the rents, issues, and profits of the said hereditaments and premises, or by demising or mortgaging the same hereditaments and premises, or any part thereof, for all or any part of the same term, or by any other reasonable ways and means, levy and raise so much money as he or they shall think it expedient to raise for paying the said annuity or yearly rent, or sum of pounds, or such part thereof as shall for the time being be in arrear, and all costs and expenses which shall have been occasioned by the nonpayment thereof, and shall apply the money which shall be so raised, or a competent part thereof, in payment and satisfaction of such arrears, costs, and expenses accordingly, and shall pay the residue of the said monies (if any) unto the said [*husband*], his heirs, executors, administrators, or assigns; *And* upon further trust, that in case the said [*wife*] shall happen to survive him the said [*husband*], he the said [*trustee*], or his executors, administrators, or assigns, shall, within six calendar months next after the decease of the said [*husband*], by and out of the rents and profits of the said hereditaments and premises, or by sale or mortgage of the same hereditaments and premises, or any part thereof, for all or any part of the same term, or by any other reasonable ways or means, levy and raise the sum of pounds of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of four pounds for one hundred pounds by the year, to be computed from the day of the decease of the said [*husband*]; and shall pay the same sum and interest, when so raised, unto the said [*wife*], her executors, administrators, and assigns, for her or their own use and benefit; *And* in the said indenture are contained provisions for cesser of the said term of one thousand years, when the trusts thereof shall have been fully performed, and for enabling the said [*trustee*], his executors, administrators, or assigns, to reimburse himself and themselves out of the said annuity or yearly rent, or sum of pounds, all sums of money, costs, and expenses, which he or they shall pay or be put unto, by reason of the said [*trustee*]

and also for raising for the wife the sum of *l.* in case she should survive her husband.

entering into the covenants thereinafter referred to, and hereinafter contained; *And* by the said indenture now in recital, the said [*husband*] hath covenanted with the said [*trustee*], his executors and administrators, to permit the said [*wife*] at all times, notwithstanding her said coverture, to live separate and apart from him the said [*husband*], and free from his control and molestation. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said [*trustee*], and in consideration of the premises, HE the said [*trustee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*husband*], his executors and administrators, in manner following, (that is to say); that while the said [*husband*] and [*wife*] shall live separate and apart from each other, the said [*husband*] shall not be liable or obliged to pay for the maintenance, support, lodging, or clothing of the said [*wife*], or to pay any debt or debts which hath or have been already contracted by the said [*wife*], and is or are now due and unsatisfied, or any debt or debts which shall, at any time or times hereafter, during the said separation, be contracted by the said [*wife*]; *And* that he the said [*trustee*], his heirs, executors, or administrators, shall and will, at all times hereafter, save, defend, keep harmless and indemnified the said [*husband*], his executors and administrators, and his and their estates and effects whatsoever and wheresoever, from and against all and every the debt or debts, which hath or have been, or shall be so contracted by the said [*wife*] as aforesaid, and from and against all actions, suits, claims, demands, losses, damages, costs, and expenses which he the said [*husband*], his heirs, executors, or administrators, shall or may be involved in, incur, sustain, pay, expend, or be put unto, for or on account of the maintaining, supporting, lodging, and clothing of the said [*wife*], during such separation as aforesaid, or for or on account of any debt or debts, which hath or have been, or shall be so contracted by her the said [*wife*] as aforesaid, or any of them, or for or on account of any act, deed, matter, or thing whatsoever, in any wise relating thereto; *And* further, that the said [*wife*], or any person or persons on her behalf, or by her direction or procurement, shall

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Testatum clause.

The trustee covenants with the husband.

that the husband shall not be obliged to pay for the maintenance of the wife, or pay any debts she may contract during the separation;

and that the said trustee will indemnify him therefrom;

and that the wife will not take any pro-

DEED OF COVENANT FROM A TRUSTEE OF A WIFE TO INDEMNIFY HER HUSBAND.

not, nor will at any time hereafter, commence or prosecute any suit or suits in any court or courts whatsoever, for compelling the said [*husband*] to cohabit (*c*) or live with her the said [*wife*], or to allow her any support, maintenance, or alimony whatsoever; *And* that he the said [*trustee*], his heirs, executors, or administrators, shall and will at all times hereafter save, defend, keep harmless and indemnified the said [*husband*], his heirs, executors, and administrators, and his and their estates and effects, from and against any such suits, claims, or demands, as last aforesaid; and all costs and expenses which shall be paid or incurred, for or on account of the same: *And further*, that if the said [*wife*], or any person or persons on her behalf, or by her direction or procurement, shall act contrary to the said last-mentioned covenant and agreement, he the said [*trustee*], his executors or administrators, shall and will, immediately thereupon, pay to the said [*husband*], his executors or administrators, the sum of pounds, as or by way of stated or liquidated damages (*d*); such sum to be in addition to and exclusive of the losses, damages, costs and expenses which the said [*husband*], his executors or administrators, shall sustain or be put unto by reason of such suits, claims, or demands as last aforesaid, and against which he and they is and are hereby indemnified by the said [*trustee*], as hereinbefore is mentioned. IN WITNESS, &c.

ceedings to compel the husband to live with her, or allow her any further provision for her support;

and that the trustee will indemnify the husband therefrom.

and pay him — *l.* as stated damages if the wife should sue him.

(*c*) In the case of *Westmeath* v. *Westmeath*, Jacob p. 137, Lord Eldon expressed doubts as to the validity of a covenant of this description, on the ground that being founded on the separation of a husband and wife, it was contrary to the policy of the law. But as it seems from the cases referred to in the Introductory Observations to this title, that separation deeds may now be considered to be valid, no sustainable objection, it is conceived, can be made to such a covenant. There appears however, to be no express decision on the point.

(*d*) As it is doubtful whether the husband would be able to recover from the trustee under the above covenant, any further sums than he had actually paid on account of any suit which might be instituted by his wife, it seems proper that the husband should insist upon a stated sum, as damages for the inconvenience and annoyance to which he may be subjected by such suit.

BETWEEN HUSBAND AND WIFE.

DEED *of* SEPARATION *between a Husband and Wife, where it was agreed that the Husband should pay to the Wife a Sum of Money, and deliver to her her Cloathes, Wearing Apparel, and Ornaments of the Person, and secure to a Trustee for her during her Life a yearly Rent-charge for her separate Use, and should secure to her a further Sum of Money in the event of her surviving him, and should covenant to permit her to live separate from him, and free from his Control and Molestation : in consideration of the Trustee covenanting to indemnify the Husband from the Maintenance and Debts of the Wife, and any Claim by her for Cohabitation or Alimony, by an Indenture of even date* (*a*).

THIS INDENTURE, made the day of , BETWEEN [*husband*] of, &c. of the first part; [*wife*] of, &c. (the wife of the said [*husband*]) of the second part; and [*trustee*] of, &c. of the third part: WHEREAS some unhappy differences have arisen and still subsist between the said [*husband*] and [*wife*], and in consequence thereof it hath been agreed that they should from henceforth live separate and apart from each other; *And* that the said [*husband*] should immediately pay to the said [*wife*] for her separate use, the sum of pounds, and deliver over to her as her sole and separate property, all the clothes, wearing apparel, and ornaments of the person now usually used and enjoyed by her; *And* that he should secure to the said [*trustee*], during the life of the said [*wife*], an annuity or yearly rent-charge of pounds, to be chargeable upon and payable out of the messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby charged and demised, and their appurtenances, with such proportionate part thereof as herein-

Parties.

Recites the agreement to separate, and the arrangement thereon.

(*a*) See the last precedent, page 287.

BETWEEN HUSBAND AND WIFE.

after is mentioned, *In trust* nevertheless for the sole and separate use of the said [*wife*]; *And* that he the [*husband*] should also secure to the said [*wife*], in the event of her surviving him, the payment of a sum of pounds, within six calendar months next after his decease, with interest for the same after the rate of four pounds for one hundred pounds by the year, to be computed from the day of his decease, and to be raised and raisable out of the said messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby charged and demised, and their appurtenances; *And* that the said [*husband*] should covenant with the said [*trustee*] in manner hereinafter mentioned; *And* that the said [*trustee*] should enter into such covenants with the said [*husband*] for indemnifying him against the maintenance and debts of his said [*wife*], during the said separation, and against any claim by her for cohabitation or alimony, as the counsel of the said [*husband*] should reasonably require:

That husband has paid wife —*l.* and delivered to her, her clothes, &c.

And whereas in pursuance and part performance of the said agreement, the said [*husband*] hath this day, with the privity of the said [*trustee*], (testified by his being a party to and sealing and delivering these presents), paid unto the said [*wife*], the sum of pounds, for her sole and separate use, as they the said [*wife*] and [*trustee*] do hereby respectively admit and acknowledge: And whereas in pursuance and further performance of the said agreement, the said [*husband*] hath this day, with the like privity of the said [*trustee*], (so testified as aforesaid), delivered up to the said [*wife*], all and singular the clothes, wearing apparel, and ornaments of the person, as they the said [*wife*] and [*trustee*] do hereby also respectively admit and acknowledge:

And that by an indenture of even date, the trustee has covenanted to indemnify the husband against the debts of the wife.

And whereas in pursuance and further performance of the said agreement, by an indenture bearing even date with these presents, and made, or expressed to be made, between the said [*trustee*], of the first part; the said [*wife*], of the second part; and the said [*husband*], of the third part; the said [*trustee*] has covenanted with the said [*husband*], his executors and administrators, to indemnify him the said [*husband*], his executors and administrators, and his and their estates and effects, from and against all and every the debt or debts which hath or have been

already contracted by the said [*wife*], and which is or are now due and unsatisfied, and all and every the debt or debts which shall at any time hereafter be contracted by the said [*wife*], and all actions, suits, claims, and demands on account of the said debts, or any of them, and also from and against all sums of money, losses, and expenses, which the said [*husband*], his executors, or administrators, shall or may pay or be put unto for or on account of the maintaining, supporting, lodging, and clothing of the said [*wife*], during the said separation, and all actions, suits, claims, and demands on account thereof, *And* also from and against any suit or suits which may be instituted for compelling the said [*husband*] to cohabit or live with the said [*wife*], or to allow her any maintenance, support, or alimony, other than and besides the provision made for the said [*wife*] by the thereinbefore recited indenture, meaning thereby these presents, and all costs and expenses which should be paid or incurred for or on account of the same. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustee*] to the said [*husband*] paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HE the said [*husband*], with the privity and approbation of the said [*wife*], (testified by her being a party to and sealing and delivering these presents,) *Hath* granted, bargained, sold, and confirmed, *And* by these presents *Doth* grant, bargain, sell, and confirm unto the said [*trustee*], his executors, administrators, and assigns, one annuity or clear yearly rent or sum of pounds, of lawful money of Great Britain, to be paid and payable during the term of ninety-nine years, to be computed from the day of the date of these presents, if the said [*wife*] shall so long live, and to be charged and chargeable upon and yearly issuing and payable out of ALL THAT messuage or tenement, situate, lying, and being, &c.; *And also*, all that messuage or tenement (*parcels*); *And also*, upon and out of all and singular houses, outhouses, &c. (*general words*). TO HAVE AND TO HOLD

and any claim by her for the restitution of conjugal rights, or alimony.

First witnessing part.

The husband grants to the trustee an annuity or yearly rent of —*l.* during 99 years, if the wife shall so long live;

BETWEEN HUSBAND AND WIFE.

the said annuity or yearly rent unto the said [*trustee*], his executors, administrators, and assigns, from henceforth, for and during the said term of ninety-nine years, if the said [*wife*] shall so long live, and to be paid and payable at or in the Common Dining Hall of the Inner Temple, in the city of London, by four equal quarterly portions, between the hours of ten and twelve o'clock in the forenoon, on the day of , the day of , the day of , and the day of , in every year, without any deduction or abatement whatsoever out of the same or any part thereof, for or on account of any present or future rates, taxes, charges, assessments, or impositions whatsoever, the first quarterly payment of the said annuity or yearly rent or sum of pounds, to be made on the day of now next ensuing, and if the said [*wife*] shall happen to depart this life during the said term, on any other than one of the quarterly days of payment hereinbefore mentioned, a proportionate part of the said annuity or yearly rent or sum, to be paid to the said [*trustee*], his executors, administrators, and assigns, for the time which shall have elapsed between the quarterly day of payment immediately preceding the decease of the said [*wife*], and the day of her decease, such payment to be made on demand, at the place and between the hours aforesaid, and without any deduction or abatement whatsoever: AND the said [*husband*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*], his executors, administrators, and assigns, in manner following (that is to say); that in case the said annuity or yearly rent or sum of pounds, or any part thereof, should be behind and unpaid for the space of twenty-one days next after any of the said days or times whereon the same ought to be paid as aforesaid, *Then*, and in every such case, and when and so often as it shall so happen, it shall and may be lawful to and for the said [*trustee*], his executors, administrators, or assigns, into and upon the said messuages or tenements, lands, hereditaments, and premises hereby charged with the payment of the said annuity or yearly rent or sum of pounds, or any of them, or any part

with power of entry and distress, in case the annuity should be in arrear for twenty-one days;

thereof, to enter, and then and there to distrain for the same annuity or yearly rent or sum, or such part as shall for the time being be in arrear or unpaid as aforesaid, and the distress or distresses then and there found, to take, retain, sell, and dispose of according to law, in like manner as in cases of distress taken for nonpayment of rent reserved on lease, or common demise, *To the end* and intent that thereby and therewith the said [*trustee*], his executors, administrators, or assigns, may be fully paid and satisfied the said annuity or yearly rent or sum of pounds, and all arrears thereof, or so much and such part thereof as shall then remain due and unpaid, and all costs, charges, and expenses, which shall be sustained or occasioned by the nonpayment of the same; *And further*, that if the said annuity or yearly rent or sum of pounds, or any part thereof, shall at any time or times hereafter be in arrear and unpaid for the space of thirty days next after any of the said days or times whereon the same ought to be paid as aforesaid, *Then*, and in such case, and when and so often as it shall so happen, it shall and may (although no formal or legal demand shall have been made thereof) be lawful to and for the said [*trustee*], his executors, administrators, or assigns, into and upon the said messuages or tenements, lands, hereditaments, and premises hereby charged with the payment of the said annuity or yearly rent or sum of pounds, or any of them, or any part thereof, to enter, and the same to have, hold, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take, until he or they shall be thereby or therewith or otherwise fully paid and satisfied the said annuity or yearly rent or sum of pounds, and all arrears thereof, at the time of such entry, and also so much of the said annuity or yearly rent or sum as shall afterwards accrue or grow due during the time the said [*trustee*], his executors, administrators, and assigns, shall continue in possession of the same hereditaments and premises, together with all such costs, charges, damages, and expenses, as the said [*trustee*], his executors, administrators, or assigns, shall be put unto by reason of the nonpayment of the same annuity or yearly rent or sum, or any part thereof, on or at the days or times hereinbefore

and with power of retention of possession and perception of rents and profits of the hereditaments charged with the annuity, in case the annuity should be in arrear for thirty days.

BETWEEN HUSBAND AND WIFE.

mentioned and appointed for the payment thereof, such possession when taken to be without impeachment of waste. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, HE the said [*husband*], at the request and with the privity and approbation of the said [*wife*], (so testified as aforesaid,) *Hath* granted, bargained, sold, and demised, *And* by these presents *Doth* grant, bargain, sell, and demise unto the said [*trustee*], his executors, administrators, and assigns, ALL and singular the said messuages or tenements, lands, hereditaments, and premises hereinbefore particularly described, and hereby charged with the payment of the said annuity or yearly rent or sum of pounds as aforesaid, and their and every of their appurtenances; *And* the reversion, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted, bargained, sold, and demised, or intended so to be, and every part thereof, and their appurtenances, (subject to and charged and chargeable with the said annuity or yearly rent or sum of pounds, hereby granted as aforesaid, and the powers and remedies hereinbefore given for securing the payment of the same,) unto the said [*trustee*], his executors, administrators, or assigns, from the day next before the day of the date of these presents, for and during and unto the full end and term of three hundred years, without impeachment of waste; *But* nevertheless upon the trusts, and subject to the provisoes and agreements hereinafter declared and contained concerning the same (that is to say); *Upon trust* that he the said [*trustee*], his executors, administrators, or assigns, do and shall permit and suffer the said [*husband*], his heirs or assigns, to receive and take the rents, issues, and profits of the said hereditaments and premises, until the said annuity or yearly rent or sum of pounds, or some part thereof, be in arrear and unpaid for the space of forty days next after the same shall become due and payable; *And* when and so often as the said annuity or yearly rent or sum of pounds, or any part thereof, shall be in arrear and unpaid by the said space of forty days next after the same shall

Second witnessing part.

The husband demises to the trustee,

the hereditaments and premises before charged with the said annuity or yearly rent.

Habendum for 300 years, Upon the trusts after-mentioned;

viz. to permit the husband, his heirs or assigns, to receive the rents till the annuity, or some part thereof, is in arrear for forty days; and then by mortgage or sale to raise the same annuity, and all costs and expenses;

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be payable, do and shall (but subject and without prejudice as aforesaid,) by and out of the rents, issues, and profits of the said hereditaments and premises, or by demising, leasing, mortgaging, or selling the same hereditaments and premises or any part thereof, for all or any part of the said term, or by bringing actions against the tenants or occupiers of the same hereditaments and premises or any part thereof, for the recovery of the rents, issues, and profits thereof then in arrear, or by more than one of or by all the ways and means aforesaid, or by such other ways and means as to him or them shall seem meet, levy and raise such sum or sums of money as will be sufficient, or as he or they shall think expedient to raise, for paying and satisfying to the said [*trustee*], his executors, administrators, or assigns, the said annuity or yearly rent or sum of pounds, or such part thereof as shall be so in arrear and unpaid, as aforesaid, and all costs, charges, and expenses, which the said [*wife*], her executors, administrators, or assigns, shall or may sustain, expend, or be put unto by reason of the non-payment thereof, or which the said [*trustee*], his executors, administrators, or assigns, shall or may sustain, expend, or be put unto, in or about the execution of the trusts hereby in him or them reposed, and do and shall pay and apply the money so to be levied and raised as aforesaid, or a competent part thereof, in or towards satisfaction of the said arrears, costs, charges, and expenses accordingly; and the overplus in residue thereof (if any) unto the said [*husband*], his heirs, executors, administrators, and assigns; *And* upon this further trust, that in case the said [*wife*] should survive the said [*husband*], he, the said [*trustee*], his executors, administrators, or assigns, do and shall, within six calendar months next after the decease of the said [*husband*], by mortgage, sale, demise, or other disposition of the said hereditaments and premises comprised in the said term of three hundred years, or some part thereof, for all or any part of the same term, or by and out of the rents and profits of the said hereditaments and premises, or by bringing actions against the tenants or occupiers of the same hereditaments and premises, or any of them, for the rents and profits then in arrear, or by all or any of the said ways or means, or by any other ways or means which he the said [*trustee*], his

and in case the said wife shall survive the said husband, Upon trust to raise for her the sum of —*l.* with interest from the husband's death, and to pay the same accordingly;

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executors, administrators, or assigns, shall think fit, levy and raise the sum of pounds of lawful money of Great Britain, with interest for the same after the rate of four pounds for one hundred pounds by the year, to be computed from the day of the decease of the said [*husband*], until the said sum shall be raised, and do and shall pay the said sum and interest, when raised, unto the said [*wife*], her executors, administrators, or assigns, for her and their own absolute use and benefit; *And upon further trust*, that he, the said [*trustee*], his executors, administrators, or assigns, do and shall permit and suffer the said [*husband*], his heirs or assigns, or other the person or persons who shall for the time being be entitled to the said hereditaments and premises comprised in the said term of three hundred years in remainder or reversion immediately expectant upon the determination of the same term, to receive and take so much of the rents, issues, and profits of the said hereditaments and premises as shall for the time being remain after, or not be applied for answering and discharging the several trusts and purposes hereinbefore declared of the said term: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that when the trusts hereinbefore declared of and concerning the said term of three hundred years shall have been executed and performed or satisfied, or shall have become unnecessary, or incapable of taking effect, and the costs and charges of the said [*trustee*], his executors, administrators, or assigns, in and about the execution and performance of the same trusts, shall have been fully paid and satisfied, (which he and they are hereby respectively authorised and empowered to levy and raise, by all or any of the ways and means aforesaid, and to retain accordingly), *Then*, and immediately thenceforth, the said term of three hundred years of and in the said hereditaments and premises therein comprised, or so much thereof as shall remain unsold and undisposed of for the purposes aforesaid, shall absolutely cease, determine, and be void; *Declaration that the* [*trustee*], *his executors, administrators, or assigns, shall stand and be possessed of the annuity or yearly rent of pounds, Upon trust, to pay and dispose of the same, when received, to such person or persons as the said* [*wife*] *notwithstanding*

and, subject as aforesaid, In trust to permit the husband, his heirs, or assigns, to receive the rents and profits of the premises comprised in the said term.

Proviso for cesser of the term, on performance of the trusts, and payment of the trustees' expenses.

Declaration that the trustee shall stand possessed of the annuity, In trust to pay the same to

her coverture, shall, by any writing under her hand, direct or appoint, but so that she might not deprive herself of it by anticipation; and in default of appointment, into the proper hands of the said wife, for her sole and separate use, free from her husband's control and debts, and the receipts of the wife, or of her appointee, for the said annuity or yearly rent, to be sufficient discharges, as ante, p. 259: *Proviso that it may be lawful for the* [*trustee*], *his executors or administrators, to deduct out of the said annuity, or yearly rent, all the sums of money and expenses he may pay or be put unto, by reason of the non-observance or non-performane of any of the engagements hereinafter entered into by the said* [*trustee*], *on the part of the wife, as ante, p.* 260. *Clauses making trustees' receipts sufficient discharges, and for enabling the wife to appoint new trustees, and for enabling the trustees to reimburse themselves their expenses in executing the trusts, as ante, pp.* 262 *and* 263; AND the said [*husband*] doth hereby for himself, his heirs, executors, and administrators, COVENANT promise, and agree with and to the said [*trustee*], his executors, administrators, and assigns, that he the said [*husband*], now hath in himself good right, full power, and lawful and absolute authority, to grant, bargain, sell, and assign the said annuity, or yearly rent, or sum of pounds, and the said powers and remedies for recovering and compelling payment thereof as aforesaid, and to charge the same respectively, upon all and singular the messuages or tenements, lands, hereditaments, and premises hereinbefore mentioned; *And* also to grant, bargain, sell, and demise the same messuages or tenements, lands, hereditaments, and premises, unto the said [*trustee*], his executors, administrators, and assigns, for and during the said term of 300 years, upon the trusts and in manner aforesaid, and according to the true intent and meaning of these presents; *And* that all and singular the said messuages or tenements, lands, hereditaments, and premises shall, during the said term of 300 years, remain, continue, and be charged with and subject to the said annuity, or yearly rent, or sum of pounds, and subject and liable to the distress and distresses, entry and

such person as the wife shall appoint; and, in default, for her separate use;

Proviso that trustee may, out of the annuity, indemnify himself against all loss he may sustain by breach of the engagements entered into by him on behalf of the wife.

Covenants from the husband with the trustee:

that he has good right to grant the annuity;

and to demise the premises for 300 years;

and that the premises shall remain subject to the annuity;

BETWEEN HUSBAND AND WIFE.

entries of the said [*trustee*], his executors, administrators, and assigns, for the recovering of the same, and of all costs, charges, and expenses to be occasioned by the nonpayment thereof, and shall and may be held, possessed, occupied, and enjoyed by the said [*trustee*], his executors, administrators, and assigns, for the said term of 300 years, upon the trusts, and in manner aforesaid, and according to the true intent and meaning of these presents; *And* that free and clear, and freed and clearly exonerated and for ever discharged, or otherwise, by the said [*husband*], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all charges and incumbrances whatsoever; *And* further, that he the said [*husband*], and all and every other persons whosoever, having or claiming, or who shall or may at any time or times hereafter, have or claim any estate, right, title, or interest, legal or equitable, in, to, or out of the said messuages or tenements, lands, hereditaditaments, and premises hereby charged, and bargained, sold, and demised as aforesaid, or any of them, or any part thereof, shall and will, at any time or times hereafter, upon every reasonable request of the said [*trustee*], his executors, administrators, and assigns, but at the proper costs and charges of the said [*husband*], his heirs, executors, or administrators, make, do, and execute all and every such further and other lawful and reasonable acts, deeds, matters and things whatsoever, for the further, better, and more effectually charging the said messuages or tenements, lands, hereditaments, and premises, with the said annuity, yearly rent, or sum of pounds, and with such powers and remedies for recovering and enforcing the payment thereof as aforesaid, and also for the further, better, and more effectually granting, bargaining, selling, assuring, and confirming the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, for the residue which shall be then to come and unexpired of the said term of 300 years, upon the trusts and in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*trustee*], his executors, administrators, or assigns, or his or their coun-

and be held by the said trustee during the said term, upon the trusts aforesaid,

free from incumbrances;

and for further assurance.

sel in the law, shall be reasonably devised, or advised and required. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*husband*], HE the said [*husband*], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*], his executors and administrators, in manner following, (that is to say); that notwithstanding the marriage, &c. *the wife may live separate from the husband, and free from his control and molestation. see ante, pp.* 244, 256, and 270. IN WITNESS, &c.

BETWEEN HUSBAND AND WIFE.

Third witnessing part.

Husband covenants with trustee, that wife may live separate from the husband, and free from his control.

DEED *of* SEPARATION *between Husband and Wife, where the Husband assigned to Trustees, for the Benefit of the Wife and her Three Children, a Mortgage Debt, or Sum of Pounds, and his Life Interest in a Sum of Pounds, which was bequeathed to the Wife for her Life, with Remainder to her Children, by the Will of her late Father, and also a Reversionary Interest in a Sum of Stock, which was settled by their Marriage Settlement, and also certain Plate, Furniture, Books, Pictures, Jewels, Clothes, and Ornaments of the Person; and where the Husband covenanted with the Trustees to permit the Wife to live separate from him, and to have the sole Custody and Care of her Children; In consideration of the Wife joining in a Fine to extinguish a Jointure Rent Charge limited to her out of her Husband's Estates, and of the Trustees covenanting with the Husband to indemnify him against the Maintenance of the Wife and Children, &c.*

BETWEEN HUSBAND AND WIFE.

THIS INDENTURE, made the day of , Parties.
BETWEEN [*husband*] of, &c. esquire, of the first part; [*wife*]

BETWEEN HUSBAND AND WIFE.

of, &c. (the wife of the said [*husband*]), of the second part; and [*one trustee*] of, &c. and [*another trustee*] of, &c. of the third part; WHEREAS by an indenture of settlement, bearing date on or about the day of , and made, or expressed to be made, between the said [*husband*], of the first part; the said [*wife*], (by her then name and description of of , spinster,) of the second part; and [X. Y.] and [Y. Z.], therein respectively described, of the third part; a sum of pounds, three pounds per cent. consolidated bank annuities, then standing in the names of the said [X. Y.] and [Y. Z.] in the books of the Governor and Company of the Bank of England, as therein is mentioned, (was, in consideration of a marriage then intended, and soon afterwards solemnized between the said [*husband*] and [*wife*], and for other the considerations in the said indenture expressed,) settled upon the trusts following, (that is to say); *Upon trust*, until the said then intended marriage should be solemnized, for the said [*wife*], her executors, administrators, and assigns; *And* after the solemnization thereof, *Upon trust*, during the life of the said [*wife*], to pay the dividends and annual produce of the said sum of pounds, three pounds per cent. consolidated bank annuities, to such persons only, and for such intents and purposes only, as she the said [*wife*], notwithstanding her then intended or any future coverture, should from time to time, by any note or writing under her hand, direct or appoint, but not so as to deprive herself of the benefit thereof by sale, charge, or otherwise, in the way of anticipation; *And* in default of such direction or appointment, and subject thereto, into the proper hands of the said [*wife*], for her sole and separate use and benefit; *And* after the decease of the said [*wife*], *Upon trust*, to transfer and pay the said sum of pounds, three pounds per cent. consolidated bank annuities, and the dividends and annual produce thereof respectively, unto and amongst the child or children of the said [*husband*], by the said [*wife*], as in the said indenture is mentioned; *And* by the said indenture it was declared, that in case there should not be any child or children of the said [*husband*], by the said [*wife*], or, being such, he, she, or they should, being a son or sons, die under the age of

Recital of a marriage settlement, whereby a sum of —*l.* 3-per cents. was settled

on the wife for life;

afterwards on the children, as therein mentioned.

BETWEEN HUSBAND AND WIFE.

twenty-one years, or, being a daughter or daughters, die under that age without being or having been married with the consent of her or their parent or parents, or guardian or guardians for the time being, *Then* and in such case the said sum of pounds, three pounds per cent. consolidated bank annuities, and the dividends and annual produce thereof, or so much thereof respectively as should not be applied for the maintenance or advancement of the said children, under the provisions thereinafter for those purposes contained, should remain and be *In trust* for the survivor of them the said [*husband*] and [*wife*], his or her executors, administrators, and assigns: AND WHEREAS, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with the lastly hereinbefore recited indenture, and made, or expressed to be made, between the said [*husband*], of the first part; the said [*wife*] (then [ ]), of the second part; the said [X. Y.] and [Y. Z.], of the third part; and [G. H.] therein described, of the fourth part; divers messuages or tenements, lands, and hereditaments therein described, and therein mentioned to be situate at, &c. were (*in consideration of the marriage*) conveyed by the said husband unto the said [G. H.] and his heirs, *to the use of the husband until the marriage, and afterwards to him for life, remainder to trustees to preserve, remainder to the use and intent that the wife might receive thereout a yearly rent of pounds, for her jointure, with the usual powers, &c. and subject thereto, to the use of the said* [X. Y.] *and* [Y. Z.], *for the term of two hundred years, for raising the said yearly rent, and subject thereto, to the husband in fee:* AND WHEREAS [*father of the wife*], late of, &c., esquire, but now deceased, made and published his last will and testament in writing, bearing date the day of , and thereby, (after directing the payment of his just debts and funeral and testamentary expenses, and giving and bequeathing to the several persons therein named the several legacies therein mentioned,) gave and bequeathed to [L. M.] and [M. N.] therein respectively described, their executors, administrators, and assigns, the sum of pounds, *Upon trust*, that they the said [L. M.]

The will of the wife's father.

BETWEEN HUSBAND AND WIFE.

and [M. N.], or the survivor of them, or the executors, administrators, or assigns of such survivor, should forthwith lay out and invest the same, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, and should, with the consent of the said [*wife*], during her life, and afterwards at their or his own discretion, alter and vary the said stocks, funds, and securities, for or into other stocks, funds, and securities of a like nature, as occasion should require: *And upon further trust*, that they the said [L. M.] and [M. N.], or the survivor of them, or the executors, administrators, or assigns of such survivor, should pay the interest, dividends, and annual produce of the said trust monies so to be laid out and invested as aforesaid, and the stocks, funds, and securities in or upon which the same should be invested, to, or permit or authorise the same to be received by, his (the said testator's) daughter, the said [*wife*], and her assigns, during her life, and after her decease, should pay and transfer the same trust monies, stocks, funds, and securities, unto and amongst the children of the said [*wife*], at such times, and in such shares and manner, as in the said will are mentioned; *And* the said testator by his said will declared, that in case there should be no child or children of the said [*wife*], who should become entitled to the said trust monies, stocks, funds, and securities, under the trusts thereinbefore declared, the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof should, after the decease of the said [*wife*], and such failure of her issue as aforesaid, remain and be *In trust* for such person or persons, upon such trusts, for such intents and purposes, and in such manner, as the said [*wife*], notwitstanding her present or any future coverture, should by deed or will, to be by her respectively executed, as in the said will now in recital is mentioned, direct or appoint; and in default of such direction or appointment, and subject thereto, *In trust* for the person or persons who, under the statutes made for the distribution of the estates of intestates, would be entitled to the personal estate of the said [*wife*], in case she, having survived the

BETWEEN HUSBAND AND WIFE.

said [*husband*], had died possessed of the same, intestate; *And* the said testator appointed his wife [ ], (since deceased) and the said [L. M.] and [M. N.], executrix and executors of his said will; (*recite death of testator and probate of will, as in page* 207; AND *a mortgage in fee to the husband, as in page* 193;) AND WHEREAS some differences and disputes have arisen and still subsist between the said [*husband*] and [*wife*], and in consequence thereof it hath been agreed, that they should live separate and apart from each other; *And* that the said [*husband*] should covenant with the said trustees to allow the said [*wife*] to live separate from him, and not to molest or annoy her, and to allow her, during her life, to have the sole care and custody of her three children, by him the said [*husband*], and in case of her death, during the minority of the said children, to allow the said [*trustees*] to have the care and custody of the said children; *And* that he the said [*husband*] should assign and make over to the said [*trustees*], upon the trusts, and in manner hereinafter mentioned, his reversionary interest in the said sum of pounds, three pounds per cent. consolidated bank annuities, so settled by the said hereinbefore recited indenture of settlement as aforesaid, and also the interest, dividends, and annual produce, which, during the joint lives of them the said [*husband*] and [*wife*], will arise and grow due from or in respect of the said sum of pounds, so given and bequeathed to the said [L. M.] and [M. N.] in trust for the said [*wife*] and her children, by the said will of the said [*wife's father*] as hereinbefore is mentioned, and also the said mortgage debt, or sum of pounds and interest, secured by the said hereinbefore recited indentures of the and days of , as aforesaid, and also the plate, jewels, household goods, and furniture, books and pictures, mentioned and set forth in the schedule hereunder written, or hereunto annexed, and all the clothes, wearing apparel, and ornaments of the person of the said [*wife*]; *And* that the said [*wife*] should release and extinguish the annual sum or yearly rent of pounds, so limited to her for her life for her jointure in and by the said hereinbefore recited indenture of release of the

The agreement to separate, and the arrangement made thereon.

BETWEEN HUSBAND AND WIFE.

day of as aforesaid, and should for that purpose join the said [*husband*] in levying a fine of the same annual sum or yearly rent, in manner hereinafter mentioned; *And* on the treaty for the said separation, and in consideration of the assignments agreed to be made by the said [*husband*] as aforesaid, it was agreed that the said [*trustees*] should enter into such covenants with the said [*husband*] as are hereinafter on their parts contained: AND WHEREAS it hath been thought expedient that the hereinbefore mentioned mortgage debt or sum of pounds, and the interest thereof, and the securities for the same, should be assigned and transferred to the said [*trustees*] by a separate deed or deeds, in order that on payment of the same debt or sum, the present arrangement between the parties hereto may not be disclosed to the said [*mortgagor*]: AND WHEREAS in pursuance and further performance of the said agreement, by indentures of lease and assignment and release, the lease bearing date the day next before the day of the date of the assignment and release, and the assignment and release bearing even date with these presents, and made or expressed to be made between the said [*husband*] of the one part, and the said [*trustees*] of the other part; the said mortgage debt, or sum of pounds, secured by the hereinbefore recited indentures of the and day of as aforesaid, and the interest henceforth to become due for the same, have (for the nominal considerations therein mentioned) been assigned by the said [*husband*] unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts, and subject to the powers and provisoes expressed and declared concerning the same, in and by a certain indenture therein mentioned to be then already ingrossed, and to bear even date therewith, and to be made between the same persons as are parties thereto, and meaning thereby this present indenture; *And* by the said indenture of assignment and release, it is declared that the receipt or receipts of the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, for the said mortgage debt or sum and interest thereby assigned, should be sufficient discharges for so much money as in such receipt or receipts should be expressed to be received; *And* by the

Agreement that the mortgage should be assigned by a separate deed.

The transfer of the mortgage by indentures of even date.

BETWEEN HUSBAND AND WIFE.

said indentures now in recital the messuages or tenements, lands, hereditaments, and premises, comprised in and conveyed by the said therein and hereinbefore recited indentures of the and days of and their appurtenances have (for the considerations in the said indentures now in recital mentioned) been conveyed by the said [*husband*] unto and to the use of the said [*trustees*], their heirs and assigns for ever; *But* subject, nevertheless, to such right, title, or equity of redemption, as is subsisting in the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances, under or by virtue of the said hereinbefore recited indenture of the day of : (*b*) AND WHEREAS in pursuance and further performance of the said agreement, by an indenture bearing even date with these presents, and made or expressed to be made, between the said [*husband*] and [*wife*], of the first part; the said [G. H.] of the second part; and the said [X. Y.] and [Y. Z.] of the third part; *And* by a fine *sur concesserunt*, duly acklowledged and levied before his Majesty's justices of the Court of Common Pleas, at Westminster, in this present term, as in the said indenture is mentioned, the said annuity or yearly rent of pounds, so limited to the said [*wife*], for her life, for her jointure, as aforesaid, has been conveyed unto and to the use of the said [G. H.], and his heirs, during the life of the said [*wife*], *Upon trust*, that he or they do and shall forthwith release and extinguish the same annuity or yearly rent or sum, in the said messuages or tenements, lands, hereditaments, and premises, so charged therewith, as hereinbefore is mentioned, and their appurtenances, and by &c. (*direction from husband and wife to* [X. Y.] *and* [Y. Z.], *to merge the term:*) NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance, &c. *the said* [*husband*] *covenants with the* [*trustees*] *that he will permit the* [*wife*] *to live separate from him, see* pp. 243, 256, 280; *And* that he the said [*husband*], shall and will permit and suffer the said [*wife*] to have the sole

The conveyance of the rent-charge to a trustee, in trust to release the same.

First witnessing part. Husband covenants that wife may live separate, and have the care of the children.

(*b*) For forms of transfers of mortgages on different occasions, see title TRANSFERS OF MORTGAGES.

BETWEEN HUSBAND AND WIFE.

and exclusive care, custody, and control of her said three children during their respective minorities; *And* that in case she the said [*wife*] shall happen to die during the minorities or minority of the said children, or any of them, he the said [*husband*] shall and will permit and suffer the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, to have the sole and exclusive care, custody, and control of the said children, during the remainder of their respective minorities: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance, &c. *He* the said [*husband*] *Hath* granted, bargained, sold, assigned, and set over, and by these presents *Doth* grant, bargain, sell, assign, and set over unto the said [*trustees*], their executors, administrators, or assigns, ALL that the said sum of pounds, three pounds per cent. consolidated bank annuities, now standing in the names of the said [X. Y.] and [Y. Z.], as [*trustees*] of the said hereinbefore recited indenture of settlement as aforesaid, and the stocks, funds, or securities, in or upon which the same shall or may hereafter be invested in pursuance of the power for changing securities, in the said last mentioned indenture contained as aforesaid, and the dividends and annual produce of the same respectively; *And* all the right, title, interest, property, claim, and demand whatsoever, both at law or in equity, of him the said [*husband*], in, to, out of, or upon the same, TO HAVE, HOLD, RECEIVE, and take the said sum of pounds, three pounds per cent. consolidated bank annuities, stocks, funds, securities, and all and singular other the premises hereby firstly assigned, or intended so to be, and every part thereof, (but subject and without prejudice to the trusts, powers, and provisions, in the said hereinbefore recited indenture of settlement declared and contained concerning the same, in favor or for the benefit of the said [*wife*] and her children as aforesaid), unto the said [*trustees*], their executors, administrators, and assigns, absolutely; *But* nevertheless *In trust* for such person or persons, and for such intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*wife*] shall (*by deed or will, as in p.* 249) from

And that in case of her death during their minority, the trustees shall have the care of them.

Second witnessing part. Husband asigns his reversionary interest in the settled monies to the trustees for the wife.

BETWEEN HUSBAND AND WIFE.

time to time direct or appoint; *And* in default of and until such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, *In trust* for the person or persons, &c., *her next of kin, as in p.* 249—251: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations hereinbefore expressed, *He* the said [*husband*] *Hath* granted, bargained, sold, assigned, and set over; *And*, &c. unto the said [*trustees*], their executors, administrators, or assigns, ALL the interest, dividends, and annual produce, which during the joint lives of them the said [*husband*] and [*wife*] shall arise and grow due, for or in respect of the said sum of pounds, so given and bequeathed by the said will of the said [*wife's father*] to the said [*wife*] and her children, as hereinbefore is mentioned, and the stocks, funds, and securities, in or upon which the same shall for the time being be invested, pursuant to the trust or direction in that behalf in the said will contained; *And* all the right, &c. TO HAVE, HOLD, RECEIVE, and take the said interest, dividends, annual produce, and all and singular other the premises hereby secondly assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, or assigns absolutely, but nevertheless *Upon trust* that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall receive and take the said interest, dividends, and annual produce, as and when the same shall become due; *And* do and shall *pay the same to the* [*wife*] *for her separate use, and on her receipt alone*, as in p. 259: AND THIS INDENTURE (being the indenture mentioned or referred to in and by the said hereinbefore recited indenture of assignment and release of even date therewith) FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, *It is hereby declared and agreed* by and between the said parties hereto, that the said [*trustees*], their executors, administrators, or assigns, shall stand and be possessed of, and interested in the said debt or sum of pounds, so assigned and transferred to them by the said last men-

Third witnessing part.

Husband assigns his life-interest in the monies bequeathed to his wife by her father's will,

to the trustees, for the separate use of the wife.

Fourth witnessing part.

Declaration of trust of the mortgage debt.

BETWEEN HUSBAND AND WIFE.

tioned indenture as aforesaid, upon the trusts following, (that is to say); *Upon trust*, that they the said [*trustees*], or the survivor, &c. do and shall either continue the same in its present state of investment, or call in &c., and lay out the money arising thereby in &c., (see page 306,) and do and shall *stand possessed of the same trust fund, upon the same trusts as in and by the said hereinbefore recited indenture of settlement, and these presents, are expressed and declared of and concerning the said therein and hereinbefore mentioned sum of pounds, three per cents, &c. or as near thereto, &c.* AND THIS INDENTURE ALSO WITNESSETH, that in pursuance, and further, &c.; *And* for the considerations hereinbefore expressed, HE the said [*husband*], (*assigns to the trustees, all the plate, furniture, &c.*) mentioned and set forth in the said schedule hereunder written, or hereunto annexed; *And* all the right, &c. TO HOLD, RECEIVE, AND TAKE the said plate, &c. unto the said [*trustees*], their executors, administrators, and assigns, *Upon trust for the wife for her life, and afterwards to sell and stand possessed of the monies arising thereby*, upon the same trusts as are hereinbefore declared or referred to, of and concerning the said mortgage debt, or sum of pounds, so assigned and transferred to the said [*trustees*] as hereinbefore is mentioned; (*see ante*, pages 269 and 270: *Covenants for title: Power to change trustees, &c.* see pages 26. 36. 262.) AND THIS INDENTURE LASTLY WITNESSETH, that, in pursuance and further, &c. THEY the said [*trustees*] *jointly and severally covenant with the husband*, to indemnify him against the maintenance of the wife and her children by him, and against any claims for cohabitation or alimony, and that the wife shall release her dower in any estates the husband may hereafter acquire. (*See ante*, pages 245. 264.) IN WITNESS, &c.

Fifth witnessing part. The husband assigns the plate, furniture, &c. to the trustees for the wife for her life; and afterwards to sell and stand possessed of the monies upon the same trusts as the mortgage debt.

Sixth witnessing part. The trustees covenant with the husband to indemnify him against the maintenance of the wife and children, &c.

Here add the Schedule.

SETTLEMENTS.

ON MARRIAGE SETTLEMENTS.

I. *Preliminary Observations, p.* 313.—*Marriage Settlements, p.* 314.—*Articles, p.* 314.—*Settlements, where made conformable to Articles, p.* 314.—*Requisites of Marriage Articles, p.* 315.—*What form is necessary, p.* 315.—*Where Equity will support informal Marriage Agreement, p.* 315.—*In what way Articles will be carried into Execution, p.* 316.—*Where Equity will set aside Settlement, p.* 317.—*At whose instance Marriage Articles will be carried into Execution, p.* 318.—*No limitation as to time, p.* 319.—*Marriage Settlements before Marriage, p.* 319.—*When valid, p.* 319.—*When void, p.* 320.—*Settlements made after Marriage, p.* 321.—*What consideration sufficient to support it, p.* 321.—*When void without consideration against Creditors, p.* 322.—*When voluntary limitations in settlements are void, p.* 323.—*Who may make, p.* 326.—*Married Women, p.* 326.—*Infants, p.* 326.—*What may be settled, p.* 327.—*Settlements made by Persons in Trade, p.* 328.—*Bonds and Settlements intended to defeat the Bankrupt Acts, when valid, p.* 329.—*Wife's Equity against Assignees of Bankrupts, p.* 330.—*Settlements in pursuance of Wills, p.* 331.—*Settlements of Customary Property, p.* 332.—*Settlement of Choses in Action, p.* 333.—*Wife's Right of Survivorship how barred, p.* 334.—*Settlements to the Separate Use of Married Women, p.* 337.—*Pin Money, p.* 341.—*Wife's Equity for a Settlement, p.* 342.—*Contracts in Derogation of the Marriage Contract, p.* 349.—*Feigned Conveyances, in order to bring about Marriages, p.* 350.—*Settlements in Derogation of the Marital Rights, p.* 351.

II. On the Deeds employed in Marriage Settlements, *p.* 352.

Preliminary Observations.

The Consideration of every subject which strictly comes within the meaning of the word *settlement*, would demand a treatise of a very extensive nature. The following pages will be almost entirely devoted to those deeds to which this name is most familiarly given, namely, *Marriage Settlements*. Other family settlements, will be here only briefly adverted to. Separation deeds have already been discussed, and

settlements for the payment of debts and similar purposes, will be considered under the title TRUST DEEDS.

The desire of making a settlement of property on the marriage of the owner is so natural, and its propriety so obvious, that we find, at the earliest period of our legal history, some attempt to effect it. The fee simple conditional, which was intended to be made unalienable by the statute *de donis*, may be considered as the first systematic form of settling property; and it has been gradually moulded into the admirable, although somewhat complicated machinery, now in use. This remark relates only to freeholds; the settlement of copyhold, leasehold, and personal property, is but of recent date; and in these last, it has simply been endeavoured to follow the limitations which have been found beneficial in the settlement of freeholds, so far as the peculiar nature of the property to be settled, would admit.

Marriage settlements, when made.

Marriage settlements are made either before marriage or after marriage, and are drawn up in pursuance of articles or agreements previously entered into between the parties; or are executed at once, without any prior agreement.

Marriage articles.

Marriage articles, or agreements drawn up before marriage, and giving briefly the heads of the intended settlement, are now of frequent occurrence, and are afterwards carried into effect in the shape of a complete settlement.

Marriage articles must be fair and reasonable, or they will not be carried into execution by a court of equity, although if a final and complete settlement once be made, it will not be disturbed, *Anon.* 2 Cas. in Cha. 17. unless it be, on the face of it, contrary to the intentions of the parties.

Settlements, where made conformable to articles.

If a settlement be made before marriage, although there have been prior articles, if it be not expressed to be in pursuance of the articles, and the settlement differs from them, yet a new settlement will not be directed to be made, as the court will presume that the articles have been abandoned by the parties, *Legg* v. *Goldwire*, Cas. temp. Talb. 20, *Glanville* v. *Payne*, 2 Atk. 39. *Barton* v. *Hastings*, Eq. Cas. Ab. 393. *Warwick* v. *Warwick*, 3 Atk. 291.

But where the settlement is expressed to be made in pursuance of the articles, or where it is not drawn up until after the marriage, if it is inconsistent with the articles, it will be rectified in equity, even against a purchaser for a valuable consideration, with notice of the articles. *Warwick* v. *Warwick, ubi sup.*; *Powell* v. *Price*, 2 P. W. 535; 2 Eq. Ab. 498. pl. 17. But it seems, that the articles must themselves be produced to the court, as a guide whereby the settlement may be rectified, and a mere recital of them in the settlement will not be

sufficient; *Cardwell* v. *Mackrill*, Amb. 515; *Ashbarton* v. *Rooke*, 3 Vin. Ab. 363; *Battersbee* v. *Farringdon*, 1 Swanst. 106. and Vol. VI. 247, and see *post*, 319.

Settlement will sometimes be taken as articles.

If the apparent intention of the parties will be more completely effected, equity will hold an instrument, which is in form a final settlement, to be mere articles for a settlement; *Trevor* v. *Trevor*, 1 Eq. Ca. Ab. 387; *White* v. *Thornborough*, 2 Vern. 702. Prec. Cha. 425.

Having made these few general observations upon marriage articles, it will now be proper to enquire more particularly into their requisites and when, and in whose favour equity will carry them into execution.

Articles must be in writing.

What form is necessary.

Agreements made in consideration of marriage, must be in writing, and signed by the person to be charged therewith, or by some person lawfully authorized by him. 29 Car. II. c. 3, s. 4. Under these words, bonds entered into on a marriage, have been considered as good marriage contracts, and a specific performance has been enforced accordingly, in equity, *Acton* v. *Pierce*, 2 Vern. 480; *Lewis* v. *Madocks*, 8 Ves. 150; 17 Ves. 48, S. C. Letters will also be enforced, if they are written before marriage, *Randal* v. *Morgan*, 12 Ves. 57; and the terms are sufficiently full and distinct, *Fowle* v. *Freeman*, 9 Ves. 351; *Parker* v. *Sargent*, Cas. temp. Finch, 146; *Stratford* v. *Bosworth*, 2 V. & B. 341; *Western* v. *Russell*, 3 V. & B. 187; *Wankford* v. *Fotherby*, 2 Vern. 322; *Ogilvie* v. *Foljambe*, 3 Mer. 53. But although an express assent to a proposal contained in a letter, by the party to whom it is made, is not necessary, yet it must be clearly shown that such party knew of the proposal before the marriage, *Ayliffe* v. *Tracy*, 2 P. Wms. 65; and see *Daniel* v. *Bowles*, 2 Car. & Pay. 553. And the letter must contain a positive and direct promise or offer, and not a mere contingent or revocable one, or it will not bind the party making it. *Randal* v. *Morgan*, *ubi sup.* But it is not necessary that the extent of the whole proposal should appear in the letter, if it clearly refer to, and identify another instrument, by which it may be fully learnt. *Tawney* v. *Crowther*, 3 B. C. C. 318; and see *Montacute* v. *Maxwell*, Prec. Cha. 526. And if the promise once be made by letter or otherwise, a subsequent revocation of it is of no consequence, unless it be contingent and revocable in its terms. *Wankford* v. *Fotherby*, 2 Freem. 201.

Where equity will support unwritten marriage agreement.

Other instances of equitable interference.

Where an agreement was intended to be reduced into writing, and this intention has been prevented by the fraud of one of the parties, equity will relieve, and compel the fraudulent party to perform it, *Whitchurch* v. *Bevis*, 2 B. C. C. 565. So also, if a party get an agreement into his possession, and refuse to perform it, equity will compel a performance, *Mallet* v. *Halfpenny*, Eq. Ca. Ab. 20, Prec. Cha. 404; and in one case, where an agreement was drawn up, but not signed,

from disagreement between the parties to it, and the marriage afterterwards took place, the parties having accommodated their difference, and being apparently pleased with the terms of the match, a specific performance of the agreement was decreed, on one of the parties offering to perform his part of it. *Cookes* v. *Muscall*, 2 Vern. 200. But unless it would be a fraud worked on one of the parties, an unsigned agreement will not be enforced. *Bawdes* v. *Amhurst*, Prec. Cha. 402.

If there has been a part performance of a mere verbal agreement, equity will enforce it. Thus, where a wife has been permitted, according to such an agreement, to enjoy the interest of a certain sum for her separate use during the marriage, this was looked upon as a part performance, and the other terms of the agreement were enforced. *Taylor* v. *Beach*, 2 Ves. 297. But the marriage itself is not a part performance. *Brownsmith* v. *Gilborn*, 2 Stra. 738; *Montacute* v. *Maxwell*, 1 P. Wms. 618.

In what way articles will be carried into execution.

It is proper now to consider in what way articles will be carried into execution, when the intended settlement comes to be made. And first, the great leading principle in such cases is the intention of the parties, so far as it is consistent with the rules of law. *Blandford* v. *the Duke of Marlborough*, 2 Atk. 545; *Randall* v. *Willis*, 5 Ves. 275.

Where a strict settlement will be directed.

Thus where it was agreed to settle an estate to the use of the settlor for life, without impeachment of waste, remainder to the use of his heirs male by his intended wife, remainder to the use of his own right heirs; it being clearly the intention of the parties, that the settlor should only take an estate for life, and not an estate tail, which the words implied, according to the well known technical rule, a strict settlement was decreed. *Trevor* v. *Trevor*, 1 Eq. Ca. Ab. 387; 1. P. Wms. 622; 2 B. P. C. 122; *Cusack* v. *Cusack*, 1 B. P. C. 470; and see *West* v. *Erissey*, 2 P. Wms. 349, where an actual settlement was made before marriage; *Dod* v. *Dod*, Ambl. 274; *Brudenell* v. *Elwes*, 7 Ves. 382; *Dillon* v. *Dillon*, 1 Ball & B. 89. And as equity holds the main intention of marriage settlements to be a provision for the issue, words much less strong than those given above, will be held to imply a strict settlement. *Highway* v. *Banner*, 1 B. C. C. 584; *Brandon* v. *Stratton*, Prec. Cha. 520; *Brown* v. *Jones*, 1 Atk. 187. But where the husband's estate is agreed to be settled on the wife and the heirs of *her* body, there the words will be carried literally into effect; because the interests of the issue will be thereby effectually secured both against the single acts of the husband and the wife. See *ante*, 73. *Honor* v. *Honor*, 1 P. Wms. 123; *Green* v. *Elkins*, 2 Atk. 473; *Whately* v. *Kemp*, 2 Ves. sen. 358; and thus in similar cases. So also, where a part of the lands is limited in terms importing a strict

settlement, and the remainder of it is limited in words giving the parents an estate tail; there, as it would be manifestly against the intention of the parties to limit the whole of the property in strict settlement, the articles will be construed literally. *Chambers* v. *Chambers*, Eq. Cas. Ab. 35.

Where daughters will take estates.

Although "*daughters*" are not expressly named in the articles, yet if they contain general words equally applicable to them as to sons, such as "*issue*," in the execution of the articles, estates will be decreed to be limited to them. *Hart* v. *Middlehurst*, 3 Atk. 371: and see *West* v. *Errissey*, 2 P. Wms. 349; 1 Com. 412; 3 B. P. C. 327; *Powell* v. *Price*, 2 P. Wms. 535.

Where joint estates will be limited.

In carrying articles into effect, it is usual to limit successive estates tail to the first and other sons, &c. But if the estate be directed to be settled upon the issue of the marriage, "whether sons or daughters," or similar words are used; here, as the intention of the parties is that the children should take equal and joint estates, it will be proper that the settlement should be made accordingly. *Taggart* v. *Taggart*, 1 Scho. & Lef. 84.

But where the carrying the articles into effect according to their literal meaning, would be contrary to the rules of law, then a settlement will be made as nearly consistent with the intention as possible, consistently with the rules of law, *Humberston* v. *Humberston*, 1 P Wms. 332. *Godolphin* v. *Godolphin*, 1 Ves. sen. 21. *Pitt* v. *Jackson*, 2 B. C. C. 51. *Routledge* v. *Dorrill*, 2 Ves. jun. 357. *Deerhurst* v. *St. Albans*, 5 Mad. 232. 5 B. and A. 801. 1 Turn. 25. *Bacon* v. *Proctor*, 1 Turn. 31.

What clauses must be introduced in the settlement.

All the requisite clauses must be introduced into the settlement, which are necessary to give it complete effect. Thus, although no direction to that effect be contained in the articles, limitations to trustees to preserve contingent remainders, when they are necessary, must be inserted in the proper places in the settlement, *Baskervile* v. *Baskervile*, 2 Atk. 281; *Stamford* v. *Hobart*, 1 B. P. C. 288; *Green* v. *Hayman*, 2 Cas. in Cha. 10. Thus also, if a misdirection be given as to placing the clauses, as a direction to limit a term for raising children's portions, *after* the limitations to the sons in tail, it must be introduced in the settlement before them, *Uvedale* v. *Halfpenny*, 2 P. Wms. 151.

Thus also, if the articles direct that all usual powers should be inserted in the settlement, powers for sale and exchange may be inserted, *Peake* v. *Pilkington*, 2 Ves. and Bea. 311; *Williams* v. *Carter*, Sugd. Pow. 142; and see *Brewster* v. *Angell*, 1 Jac. and Walk. 625.

Articles carried into execution after fine or recovery.

Marriage articles will be carried into execution, although the person who is tenant in tail under their literal meaning, may have levied a fine or suffered a recovery, and a strict settlement will be decreed; *Trevor* v. *Trevor*, *ubi sup.*; *Powell* v. *Price*, *ubi sup.*

Settlement, departing from

Where a settlement made in pursuance of articles after marriage,

articles, will be set aside.

departs from their obvious intention—equity will set it aside, and direct another to be made; *Streatfield* v. *Streatfield*, Cas. temp. Talb. 176; *Robarts* v. *Kingsley*, 1 Ves. sen. 238; and equity will also remodel the settlement, according to the intention of the parties. Thus if it appear by the settlement, that the *husband's* property is settled, so as to provide for his bankruptcy; and it was the intention to settle the wife's in this manner, equity will decree a settlement accordingly; *Higgenson* v. *Kelly*, 1 Ba. and B. 253.

So also if the husband, by articles, covenant within three months after the marriage, to settle part of his real and all the personal estate he should be possessed of during the coverture; the settlement should contain a covenant by the husband, that what real estate he should afterwards purchase, should, as to the objects of the settlement, be considered as personal estate, and the settlement will be rectified accordingly, and such a covenant will be ordered to be inserted; and real estate purchased by the husband to defeat the covenant, will be charged with the amount of the personalty; and in one instance was decreed to be conveyed to the uses of the settlement, the personal estate existing at the time of the covenant being thereby bound, *Randall* v. *Willis*, 5 Ves. 262; *Lewis* v. *Madocks*, 8 Ves. 154.

At whose instance marriage articles will be carried into execution.

A court of equity will execute articles at the instance of those persons who come within the influence of the marriage consideration, that is to say, the husband, the wife, and their issue; *Osgood* v. *Strode*, 2 P. Wms. 255; and equity will enforce a settlement at the instance of the wife, even although she has eloped with an adulterer, *Blount* v. *Winter*, 3 P. Wms. 278, Mr. Cox's note; *Seagrave* v. *Seagrave*, 13 Ves. 439. So also a child, although he may have incurred his father's displeasure, may enforce the execution of articles, *Trevor* v. *Trevor*, *ubi sup.* Grandchildren may also enforce articles, *West* v. *Errissey*, 2 P. Wms. 349. So also articles may be enforced by those who claim under any one who comes within the influence of the marriage consideration; as for instance, if there be a limitation in the articles to the right heirs of the husband, any person claiming as his right heir, may enforce the execution of the articles, *Kettleby* v. *Atwood*, 1 Vern. 298, and 1 Vern. 471. But mere volunteers cannot enforce the execution of the articles, *Colman* v. *Sarrell*, 3 B. C. C. 13. *Anon.* 12 Mod. 603; although, as articles are always fully, and never partially executed, if they are executed at all, the limitations in favour of mere volunteers will be carried into effect.

Against whom.

The execution of the articles will be enforced against the settlor, and his real and personal representatives; *Benson* v. *Bellasys*, 1 Eq. Ca. Ab. 17; *Vernon* v. *Vernon*, 2 P. W. 594; and against those claiming under him as volunteers, *Trevor* v. *Trevor*, *ubi sup.*; *Golmer* v. *Padiston*, 1 Eq. Ca. Ab. 17. They will also be enforced against a purchaser with

notice of the articles; but not, according to the better opinion, against a purchaser without notice, *Brown* v. *Stebbing*, Cas. Temp. Finch, 449; *Jerrers* v. *Cherry*, 2 Vern. 384; *Ramsden* v. *Hylton*, 2 Ves. 309; *West* v. *Errissey*, *ubi sup.*; *Bullock* v. *Sadleir*, Ambl. 764.

Although articles will be enforced against the settlor, although he is tenant in tail; yet they will not be enforced against the issue in tail, or against the remainder-man, *Fox* v. *Crane*, 2 Vern. 304 and 306; *Sayle* v. *Freeland*, 2 Ventr. 350; *Powell* v. *Powell*, Prec. Cha. 278; *Hinton* v. *Hinton*, 2 Ves. sen. 634.*

No limitation in point of time to carrying articles into execution.

In rectifying settlements and in carrying articles into execution, there does not appear to be any precise time at which a court of equity will refuse its assistance; *West* v. *Errissey*, *ubi sup.*; *Trevor* v. *Trevor*, 2 P. Wms. 349.

Marriage settlements.

I now come to the consideration of the settlement itself. Where this is made in pursuance of an agreement before marriage, although it has been merely verbal, it has been decided that the settlement so made, although executed after marriage, would be good against creditors and purchasers; *Dundass* v. *Dutens*, 1 Ves. jun. 196; 2 Cox, 235; *Lavender* v. *Blackstone*, 2 Lev. 147; *Griffin* v. *Stanhope*, Cro. Jac. 454. 1 Stra. 237. 4 East, 207; *Dawson* v. *Ellis*, 1 J. and W. 524; and although this doctrine has been lately questioned, *Randall* v. *Morgan*, 12 Ves. 74, yet it would seem to be difficult entirely to overturn it.

Settlements, if possible, should be executed before marriage.

But marriage articles, although frequently used, it is almost needless to observe, are not necessary to a settlement; and indeed, wherever it is possible, it will be found advisable that a final settlement should be drawn up and executed before marriage, and that the parties should not rely on mere articles, which are at best but an equitable security, and are always liable to be defeated by an alienation by the settlor of their subject matter to a purchaser for a valuable consideration, without notice of the articles.

Will be valid against every one.

Such a settlement executed before marriage, will be valid against every one, as marriage alone will be a sufficient consideration to support it; *Bovy's* case, 1 Vent. 193; *Reynell* v. *Peacock*, 2 Roll. 185; *Browne* v. *Carter*, 5 Ves. 862. Even although the settlor was indebted at the time of the settlement, *Campion* v. *Cotton*, 17 Ves. 263. But even a final settlement, as has before been seen, if it is made contrary to the intention, as specified in the recitals, will be remodelled by a court of equity, *Doran* v. *Ross*, 3 B. C. C. 27; *Payne* v. *Collier*, 1 Ves. 171;

Will be rectified according to the intention.

Covenants to settle.

* It should be observed, that *covenants to settle* property, will be considered in a subsequent note.

and see *ante*, 314; and a letter written by the settlor, will be admitted to shew the intention of the parties, *Barstow* v. *Kilvington*, 5 Ves. 593; *Jenkins* v. *Quenchant*, there cited; *Randall* v. *Morgan*, *ubi sup.* Where a deed of settlement contained limitations to the first and other sons of the marriage successively, and to their several and respective heirs, and for default of such issue, to the daughters and their heirs as joint-tenants; and for want of such issue, to the heirs of the survivor of the husband and wife: it was held, that the word *heirs* is only to be construed contrary to its more usual sense, where this is necessary to carry into effect the clear intention of a testator or settlor; and in their limitations, it was necessary to construe it *heirs of the body*, with respect to the sons, on account of the subsequent limitations, and they therefore took an estate tail; but it was held that the daughters took a fee, and that the word "heirs," in the latter clause, must mean heirs general, *Doe* v. *Smeddle*, 2 B. and A. 126.

But, if fraudulent, will be void; as if it contain a general power of revocation.

And if there are decided marks of fraud on the face of a settlement, executed even before marriage, it will be void. Thus, if it contain a general power of revocation over the whole, or the greater part of the property, it will be void as against strangers, under the 27th Eliz. c. 4. s. 5, *St. Saviour's* case, Lane, 21, 22; and the effect will be the same, although the power be released or extinguished before the settlor makes a subsequent sale, 3 Co. 83, *Bullock* v. *Thorne*, Moor, 617; 3 Rep. 83; *Tarbrick* v. *Marbury*, 2 Vern. 510. But the statute does not extend to settlements of personal estate; and if the power of revocation is not general, but is made to depend on the consent of some person or persons, not within the controul of the settlor, or is merely inserted to render the settlement more complete, as the powers of revocation in the sale and exchange clauses—the settlement will be valid against a subsequent purchaser, *Buller* v. *Waterhouse*, 3 Keb. 751; T. Jones, 94; *Leigh* v. *Winter*, T. Jones, 411; *Lavender* v. *Blackstone*, 2 Lev. 146; *Doe* v. *Martin*, 4 T. R. 39; *Jenkins* v. *Keymis*, 1 Lev. 150. But if the power of revocation is to be exercised on the tender of a small sum of money, or some similar act; as this is in fact a general power, the settlement will be invalid, *Griffin* v. *Stanhope*, Cro. Jac. 455. Or if the settlement contain an unlimited power of leasing on fines, or of raising money on mortgage, these being in effect general powers of revocation, the settlement will be void, *Lavender* v. *Blachstone*, 3 Keb. 527; *Turback* v. *Marbury*, 2 Vern. 511; but a limited power of mortgaging will not render the settlement invalid, *Jenkins* v. *Keymis*, 1 Lev. 150.

How parties are bound.

It may here be observed, that the consideration of marriage is not like that of other contracts, reciprocal, and if not made good on the one hand, the other is not bound. But if the mutual issue are made purchasers, though the contract be not made good by one of the parties, the issue have a right to say, "you shall each do what you can do, and

we must not be disappointed." *Per Eldon, C.* in *Rancliff* v. *Puarkyns*, 6 Dow. 209.

Settlements after marriage, in pursuance of prior articles, and not in pursuance thereof, when void.

Settlements executed after marriage, in pursuance of prior articles, stand precisely upon the same footing, in respect to their validity, as settlements made before marriage. But other settlements made after marriage are governed by different rules. The marriage alone is not a sufficient consideration to support them, some other additional consideration must exist; for although, of course, they will be valid against the settlor, and all claiming under him as volunteers, *Ball* v. *Newton*, 1 Vern. 464; 1 P. W. 60; yet they will be void, as against purchasers, with or without notice; 27 Eliz. c. 4; 30 Eliz. c. 13; *Doe* v. *Manning*, 9 East, 59; *Doe* v. *Martyr*, 1 N. R. 332. *Buckle* v. *Mitchell*, 18 Ves. 110; and against creditors, if the settlor was indebted at the time, or any other presumption of a fraudulent intention on the part of the settlor can be established; 13 Eliz. c. 5; 29 Eliz. c. 5; *Russell* v. *Hammond*, 2 Atk. 23; 3 Rep. 81 *b*. *Taylor* v. *Jones*, 2 Atk. 602. *Richardson* v. *Smallwood*, Jac. 552.

What consideration will support them.

We are now to consider what this additional consideration must be: thus the payment of a portion which the party paying it was not compellable to pay, will support a settlement after marriage. *Colville* v. *Parker*, Cro. Jac. 158. *Jones* v. *Marsh*, Cas. Temp. Talb. 64. *White* v. *Thornborough*, Prec. Cha. 425. *Ramsden* v. *Hylton*, 2 Ves. 304. *Gardner* v. *Painter*, Cas. Temp. King, 65; and it would seem, that a portion secured to be paid, would be a good consideration for a settlement after marriage; *Wheeler* v. *Caryl*, Ambl. 121; *Brown* v. *Jones*, 1 Atk. 188; *Anon.* Prec. Cha. 101; *Ramsden* v. *Hylton*, 2 Ves. sen. 309. Thus also the relinquishing an interest in the settlor's estate, as if a mother gives up her interest in her son's estate and joins with him in settling it, will support a settlement made after marriage; *Jones* v. *Marsh*, Cas. Temp. Talb. 64. So an accession of fortune to the wife will be a good consideration. *Ward* v. *Shallet*, 2 Ves. 16.

So also a settlement executed after marriage will be supported, if in consideration thereof, the husband obtains the equitable property of his wife; *Moore* v. *Rycault*, Prec. Cha. 22. *Wheeler* v. *Caryl*, Ambl. 121. *Brown* v. *Jones*, 1 Atk. 188.

A true and *bonâ fide* consideration moving from the wife, dealing with her separate property, will also support a settlement made after marriage; *Clark* v. *Nettleship*, 2 Lev. 149. *Lady Arundel* v. *Phipps*, 10 Ves. 148. Such as the wife's relinquishment of her interest in a former settlement; *Scott* v. *Bell*, 2 Lev. 70, *ibid*, 148. 1 Eq. Ca. Ab. 49. Her release of her jointure; *Ball* v. *Burnford*, Prec. Cha. 113; *Scott* v. *Bell*, 2 Lev. 70; or of her right to dower for the benefit of the husband. *Lavendar* v. *Blackstone*, 2 Lev. 147. *Pulvertoft* v.

Pulvertoft, 18 Ves. 84. *contra*, *Dolin* v. *Caltman*, 1 Vern. 294. So her parting with her own estate; *Clark* v. *Nettleship*, *ubi sup.* or the making a charge upon it; *Lady Arundel* v. *Phipps*, 10 Ves. 139, will be good considerations.

It should always be expressed, although it would seem not to be actually necessary, that the consideration is intended to support, as well the limitations to the children as to the wife; see *Ball* v. *Burnford*, *ubi sup.*

A settlement after marriage, although purely voluntary, will be good against the settlor; but if he was indebted at the time it was made, then, as far as creditors are concerned, it will be necessary that the consideration should be proved to be sufficiently ample; but even here the consideration must be grossly inadequate, to render the settlement invalid; *Ward* v. *Shallet*, 2 Ves. 18. *Dewey* v. *Baintum*, 6 East, 257. *Doe* v. *James*, 16 East, 212. *Lady Arundel* v. *Phipps*, 10 Ves. 139.

In one case, the release of part of an estate from an annuity was held to be a valuable consideration; *Roe* v. *Mitton*, 2 Wils. 356; but this case has been disapproved of by Lord Alvanley. *Brown* v. *Carter*, 5 Ves. 877.

Voluntary settlement, where void against creditors.

But even where the settlement is purely voluntary, it will not necessarily be void, as far as creditors are concerned, if the settlor was not indebted at the time; *Battersbee* v. *Faringdon*, *ubi sup.*; although with purchasers for a valuable consideration it is different.

So also if the husband's debts are subsequently incurred; *Townshend* v. *Windham*, 2 Ves. sen. 11, and there is no evidence of fraud. *Middlecombe* v. *Marlow*, 2 Atk. 519; 2 B. C. C. 90. *Battersbee* v. *Farrington*, 1 Swanst. 106.

But if the debts are incurred immediately after the settlement; 1 Atk. 93; 2 Atk. 481; or are considerable, *Turner's case*, 3 Rep. 81 b.; or if the settlor was not in solvent circumstances at the time of making it; *Lush* v. *Wilkinson*, 5 Ves. 384; or there be any other fair reason to presume the settlement fraudulent; 1 Atk. 15; *Lord Tenyham* v. *Mullins*, 1 Mod. 119; *Russell* v. *Hammond*, 1 Atk. 16; *Holloway* v. *Millard*, 1 Madd. 414; the settlement will be invalid: but the circumstance of the settlor being slightly in debt, or if the debts, although considerable, are secured by a mortgage of other adequate property, 2 B. C. C. 90, 92; 1 Madd. 418; will not affect a settlement. But the debts need not be absolutely due, to defeat a voluntary settlement; if they are contingent at the time of the settlement, and of sufficient amount, the settlement will be considered fraudulent. *Rider* v. *Kidder*, 10 Ves. 360. So also the continuing in possession by the husband, although the deed purports to be an absolute transfer of personal property, has always been looked upon as a badge of fraud. *Bamford* v. *Barrow*, 2 T. R. 594, *in notis*. But if

the possession of the husband be in conformity with the settlement, then it will be different. *Kidd* v. *Rawlinson*, 2 Bos. & Pull. 59. *Arundell* v. *Phipps*, 10 Ves. 139. *Griffin* v. *Stanhope*, Cro. Jac. 454.

A settlement made after a marriage in Scotland, although it be subsequently celebrated in England, will be held to be a mere *post* nuptial settlement, and liable, therefore, to its disabilities. *Exparte Hall*, 1 Ves. & Bea. 112.

Where voluntary limitations in settlement will be supported.

It has been for a long time a very doubtful point, whether voluntary limitations to persons not within the marriage consideration, as, for example, to brothers or sisters of the settlor, can be supported against purchasers for a valuable consideration.

In two early cases; *St. Saviour's case*, Lane, 22; and *Roscarick* v. *Barton*, cit. 2 Roll. 22, it is laid down that such limitations would be void; but several cases of authority have authorized a different rule. Thus in *Jenkins* v. *Keymis*, 1 Lev. 150, where a father and son, on the marriage of his son, limited an estate to the father for life, remainder to his son and his heirs to be begotten on his intended wife; remainder to the heirs of the body of the son; remainder over; the son married again and had issue. Lord Hale was of opinion, that the marriage consideration extended to all the limitations in the settlements, and the issue of the second marriage had a verdict in an ejectment against a purchaser for a valuable consideration. So also a limitation to a second son, in a settlement made by a father, on the marriage of a first son, was supported against a purchaser, with notice of the settlement. *White* v. *Stringer*, 2 Lev. 105. So where a woman, on a second marriage, settled her estate on her grand children by her former marriage, and her children by her intended husband, all the limitations were supported. *Newstead and others* v. *Searle and others*, 1 Atk. 264. See also *Roe* v. *Mitton*, 2 Wils. 356. *Ithill* v. *Bean*, 1 Ves. sen. 215. *Osgood* v. *Strode*, 2 P. W. 245. *Stephens* v. *Trueman*, 1 Ves. 73. *Fairfield* v. *Birch*, Sug. V. & Pur. 645, 7th edit. And see, as to settlement of copyholds, *Hall* v. *Lamb*, 1 Eden, 292. Ca. & Op. 199, *et seq. acc.*

Pulvertoft v. *Pulvertoft.*

So also, in *Pulvertoft* v. *Pulvertoft*, 18 Ves. 92, Lord *Eldon* said, "In the case of a father, tenant for life, with remainder to his son in tail, they may agree upon the marriage of the son, to settle not only upon his issue, but upon the brothers and uncles of that son; and the question would be, whether they, though not within the consideration of the marriage, are not within the contract between the father and son, both having a right to insist upon a provident provision for uncles, brothers, sisters, or other relations, and to say to each other, 'I will not agree, unless you will so settle.' The court here held such a claim not to be that of a mere volunteer, but as falling within the range of the consideration, and therefore these statutes (the statutes of Elizabeth) do not bear upon it."

Johnson v. *Legard.*

This was the state of the authorities on the subject, until the case of

Johnson and others v. *Sir Thomas Legard and others*, 3 Madd. 283. 6 Mau. and Sel. 60. S. C. 1 Turn. and Russ. 281. in which this point came directly before the court. It was sent by the Master of the Rolls to the King's Bench, and the case stated shortly, was as follows: Sir John Legard, on his marriage, by indentures of lease and release, in 1782, in consideration of the marriage and his wife's portion, and for settling a jointure on his wife, and for making a provision for the issue of the intended marriage, and for settling the hereditaments thereby released, conveyed certain manors, situate in the county of York, to the use of himself in fee until the marriage, and after the marriage, to the use of himself for life, remainder to trustees to preserve remainders, to the intent that his intended wife might receive a sum by way of jointure, remainder to trustees for a term of one hundred years to secure it, remainder to the use of other trustees for five hundred years, to secure portions for the younger children of the marriage, remainder to the first and other sons of Sir John by his intended wife, in tail male, remainder to the use of the first and other sons of Sir John by any future wife, in tail male, *remainder to Thomas Legard, a brother of Sir John, for life, remainder to trustees to preserve, remainder to the first and other sons of the said Thomas Legard, in tail male, remainder to the other brothers of Sir John Legard and their sons, in the same way*, remainder to Sir John Legard in fee. The marriage took place, and in 1807, Sir John, for a valuable consideration, conveyed a part of the settled estates to Richard Watt in fee, and at the time of the conveyance, Watt had notice of the settlement. Sir John Legard then died without issue. The question for the opinion of the court was directed to be: Whether the limitations contained in the settlement, which are subsequent to the limitations therein contained to the use of the first and other sons of Sir John Legard, by any future wife, in tail male, are good and valid limitations as against Watt, claiming under his conveyance.

The Court of King's Bench certified that they were not good or valid limitations, as against Watt; and his Honor the Vice Chancellor, on the case coming on for further directions before him, expressed his entire concurrence with the certificate.

Clayton v. *Earl Wilton.*

In *Clayton* v. *Earl Wilton*, cited in a note to the last case, 3 Mad. 302; and 6 Mau. and Sel. 67; the case sent to the King's Bench, was as follows: The plaintiff, by indentures of lease and release, in 1788, in consideration of the marriage, and of his intended wife's fortune, and for providing a jointure for his wife, and portions for the children of the marriage, conveyed certain hereditaments in the county of Lancaster, to the use of himself for life, remainder to the use of trustees to preserve, to the use of his sons by his intended wife, in tail male, *remainder to the use of the first and other sons of the plaintiff, on any woman whom*

he might afterwards marry, in tail male, remainder to the use of his daughters by his intended wife, as tenants in common in tail general, with cross remainders; remainder to the use of the plaintiff and his heirs for ever. The marriage took place, and the first wife dying, the plaintiff married a second. In 1794, he, for a valuable consideration, conveyed part of the settled estates to Lady Mary Stanley in fee. The question was, whether such conveyance to Lady Mary Stanley, was a good and valid conveyance to a purchaser for a valuable consideration, against the issue of the plaintiff's second marriage. The court certified that it was not a good and valid conveyance.

Sutton v. *Chetwynd.*

The next case was, *Sir Richard Sutton* v. *Lord Chetwynd,* 3 Meriv. 249; in which it was held, that a covenant in marriage articles, in favour of a stranger, was merely voluntary, and not to be supported by the marriage consideration; and in giving judgment, *Sir William Grant,* M. R. did not agree with the rule established by the case of *Jenkins* v. *Keymis,* but approved of *Johnson* v. *Legard,* so far as it negatived the proposition, that every limitation in a settlement is protected and rendered valuable by the consideration of marriage. But he admitted, that there were cases in which a court of equity has executed covenants in marriage articles in favour of collateral relations.

Conclusions from the cases.

The following conclusions from the cases cited, may, perhaps, assist the reader in coming to a correct opinion on this point.

1st. Limitations in a marriage settlement, to the brothers, sisters, uncles, or other relations of the settlor, will be void as against a purchaser, even with notice of the settlement.

2d. Limitations to children of a future marriage by the settlor, will be held to be good.

3d. That at any rate voluntary limitations of this nature, if inserted between *bonâ fide* limitations, supported by the marriage consideration, will not be defeated by a purchaser, with notice of the settlement *.

4th. Where father and son bar an entail, and settle property, and limit estates to the other sons and the brothers of the father, these limitations will be valid, as against a purchaser, with or without notice of the settlement.

5th. The settlor cannot himself defeat any voluntary limitations,

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* The case of *Clayton* v. *Earl of Wilton,* seems to establish both the second and third conclusions. In the marginal note in Maule and Selwyn, the second proposition is given as decided by the case; and in Maddocks, the third is said to have been decided. It will be observed, that *Johnson* v. *Legard* also countenances the second conclusion; as a limitation to the issue of a second marriage of the settlor, seems in that case to have been admitted to be valid. It is unfortunate that no full report of *Clayton* v. *Wilton* exists.

and cannot set aside any voluntary settlement. *Smith* v. *Garland*, 2 Mer. 123.

Having now explained the nature and the different kinds of marriage settlements, it will be proper to consider, who may be parties to them, and what property may be settled.

Who may make a settlement.

All persons not under some disability, and who are capable of acquiring and holding property, may also settle it. And some persons labouring under disabilities, may, under certain circumstances, make a valid marriage settlement.

Married women—what settlements they may make.

Thus a married woman may settle property of which she is seised or possessed to her separate use, or over which she has a power. *Cheslyn* v. *Smith*, 8 Ves. 183; *Richards* v. *Chambers*, 10 Ves. 580; *Seaman* v. *Duill*, 10 Ves. 580; *Gullam* v. *Trimbey*, 2 Jac. & Walk. 451 n.

So also she may settle the profits of a separate trade, which she has been permitted by her husband to carry on, and such settlement will be good against the husband. And if the trade is carried on in conformity to an agreement entered into before marriage, the settlement will be good against the creditors of the husband. See *Jarman* v. *Woolston and another*, 3 T. R. 618; 7 T. R. 233; 8 T. R. 82; 6 East, 257; *Slenning* v. *Style*, 3 P. Wms. 337; *Walter* v. *Hodge*, 2 Swanst. 105. So also it would seem, that a settlement of the profits of a trade carried on by a married woman, being a sole trader by the custom of the city of London, would be good against the husband and his creditors. And see Vol. VI. 99, 100.

Infants:—what settlements they may make.

So also the rights of an infant in property, may be affected by a settlement. Thus a female infant may be barred of her dower by a provision before marriage. 2 Byth. 492, Stewart's edit. And this provision may issue, it would seem, either out of real or personal property; *Drury* v. *Drury*, 3 B. P. C. 492; *Chitty* v. *Chitty*, 3 Ves. 545; if the fund be not precarious. But in this case, the concurrence of the parent or guardian of the infant should always be obtained, although not strictly necessary. *Durnford* v. *Lane*, 1 B. C. C. 106; *Chitty* v. *Chitty*, *ubi supra*. And the infant should be made a party to the deed of settlement; for she will not be bound by any improvident agreement which her parents or guardians may make for her. *Caruthers* v. *Caruthers*, 4 B. C. C. 511; *Corbet* v. *Corbet*, 1 Sim. & Stu. 620. Although if the settlement be fair and reasonable, it would seem, that it is not absolutely essential that she should be a party to it. *Harvey* v. *Ashley*, 3 Atk. 612.

An infant may also settle his or her personal estate, as well vested as contingent, if the settlement be reasonably beneficial to the infant. *Harvey* v. *Ashley*, *ubi supra*; *Williams* v. *Williams*, 1 B. C. C. 152.

Infants may also bind their choses in action. *Price* v. *Seys*, 3 Bar-

nardist. 123. *Trollope* v. *Linton*, 1 Sim. & Stu. 477. Although it would seem, that if any unexpected property, not within the contemplation of the parties, were to fall in, it would not be bound by a settlement, however extensive in terms, unless it were reduced into possession. *Williams* v. *Williams*, 1 B. C. C. 153. *Medcalf* v. *Ives*, 1 Atk. 63.

The more generally received opinion was, formerly, that infants might also bind their real estate by agreement before marriage, if the settlement were fair and reasonable. *Stickland* v. *Croker*, 2 Cas. in Cha. 211. *Cannell* v. *Buckle*, 2 P. Wms. 243. *Harvey* v. *Ashley*, *ubi sup.* *Warburton* v. *Lytton*, 4 B. C. C. 440. *Durnford* v. *Lane*, 1 B. C. C. 106. *Drury* v. *Drury*, 5 B. P. C. 570. But great difficulty always rested on this opinion. See *Pierson* v. *Pierson*, cit. 1 B. C. C. 115. *Clough* v. *Clough*, 3 Wood. 453; 5 Ves. 717. *May* v. *Hook*, 1 B. C. C. 112; and Co. Litt. 246 a. n. (1). *Chitty* v. *Chitty*, 3 Ves. 545. And Lord Eldon, in the case of *Milner* v. *Lord Harewood*, 18 Ves. 275, expressed a clear opinion, that a female infant was not bound by her covenant on marriage, as to her real estate. See also p. 280, and also *Trollope* v. *Linton*, 1 Sim. & Stu. 477. *Licky* v. *Knox*, 1 B. & B. 214. It may therefore be laid down, that an infant cannot bind his or her real estate. In *Tayleur* v. *Dickenson*, 1 Russ. 521, the circumstance of the settlement being by an infant seems to have escaped notice, and therefore cannot affect this rule.

All settlements by infants, to be valid, must be made *before* marriage. *Seamer* v. *Bingham*, 3 Atk. 56.

Most of the cases last adverted to, relate to female infants; but it would seem, that the same principles apply to male infants. See *Durnford* v. *Lane*, *ubi sup.* *Carüthers* v. *Carüthers*, *ubi sup.*

What may be settled.

As a general rule, all property may be settled, whether held in severalty, or in common with others; but some species of property can only be bound in equity.

Contingent interests.

Thus it is generally thought, that contingent interests cannot be settled or assigned at law; but it it quite clear, that contingent remainders, conditional limitations, springing uses, and executory devises, may be bound in equity. *Kimpland* v. *Courtney*, 2 Freem. 250. *Theobalds* v. *Duffay*, 2 P. Wms. 608. It has been repeatedly decided, that possibilities, such as the chance of an heir apparent succeeding to an estate, or of a relation obtaining a legacy on the death of his kinsman, cannot be settled at law; but they may be bound in equity. *Hobson* v. *Trevor*, 2 P. Wms. 191. *Beekly* v. *Newland*, 2 P. Wms. 181. *Wright* v. *Wright*, 1 Ves. sen. 409. *Whitfield* v. *Fausset*, 1 Ves. sen. 391. But a settlement of a possibility by deed is not always effectual, even in equity; as if the person entitled to it should, on coming into possession, convey it to a purchaser for a valuable consideration, the settle-

Possibilities.

ment would be defeated. It is more prudent, therefore, where the possibility is of lands, to levy a fine to the uses of the settlement, which will effectually prevent the settlor from conveying it away, on his becoming entitled to it. *Sir Marmad. Wivell's case*, Hob. 45; 1 Roll. Abr. 482, S. pl. 2. *Morse* v. *Faulkner*, 1 Anst. 11; 3 T. R. 365. But the settlor must actually succeed to the estate, or it will not be bound. *Edwards* v. *Rogers*, W. Jones, 456; Cro. Car. 524.

Chose in action.

So also *a chose in action* cannot be settled or assigned at law; but this may clearly be done in equity. See *ante*, p. 2.

Estates tail *ex provisione viri et regis.*

The are two species of real property, which by virtue of statutory enactments, cannot be settled or disposed of either at law or in equity; *viz.* estates tail, *ex provisione viri*, and estates *ex provisione regis*. They need, however, be only alluded to here, the principal points concerning them having been mentioned, *ante*, p. 73.

Fees.

Mr. Atherley, in his work on Settlements, p. 71, is of opinion that the fees arising from a public office cannot be settled. This opinion is, however, against the usual practice; it being not unfrequent that fees are settled, in order to carry family and other arrangements into effect. It cannot, it is conceived, be looked upon in the light of a sale of the office; it is mere direction by its owner, in what manner its emoluments should be applied, and does not seem therefore to come within the meaning of the statute of the 5 and 6 Ed. 6. c. 16, against the sale of offices. And see *ante*, 13 n. (b). And see *Aston* v. *Gwinnell*, 3 Yo. & Jerv. 13, where it was held, that the fees of clerk to the deputy registrar of a prerogative court might be assigned, and 6 Geo. IV. c. 16. s. 73. *post*, 330.

Profits of benefice.

It may be now laid down with confidence, that no clergyman can settle the profits of any ecclesiastical preferment. He was precluded from doing this by the statutes 13 Eliz. c. 20, which was afterwards repealed by the 43 Geo. III., c. 84; but this last statute having been repealed by the 57 Geo. III. c. 99, the old rule prevails. See *Doe* dem. *Cates* v. *Somerville*, 6 B. and C. 127; and 2 Byth. 250 *et seq.* Stewart's edit. where the subject is discussed at great length.

Furniture, &c.

A settlement in consideration of marriage, may be made of furniture and other moveable effects, and it will be good against creditors although the settlor retain possession, and no inventory be made, and the settlor was indebted at the time, and the wife knew it, *Campion* v. *Cotton*, 17 Ves. 263, 271; *Randal* v. *Willis*, 5 Ves. 262; *Lewis* v. *Madocks*, 8 Ves. 150; 17 Ves. 48, S. C.; *Anon.* 3 Swanst. 400, n.

We are now to consider some peculiar kinds of marriage settlements, and some other collateral matters, closely connected with the subject of which we are now treating.

Settlements by persons in trade.

If a settlement of lands be made before marriage by a person in trade, in favour of a wife or children, two months before a commission of bank-

ruptcy issues; unless the parties had notice of a prior act of bankruptcy, it will be valid, 6 Geo. IV. c. 16. s. 81. So also any settlement made by a person in trade after marriage, which is rendered valid by some additional consideration, a subject treated of in a former page, see p. 321, will be also valid, when two months have elapsed. But settlements made after marriage, unsupported by such considerations, being mere voluntary settlements, will of course be invalid, as against creditors. So also purchases by persons in trade in the names of their wives or children, will be void, *Glaister* v. *Hewer*, 8 Ves. 195; unless the purchase is made with the wife's equitable property, and the trustees of the money stipulated with the husband, that it should be so laid out; or unless the purchase was made on the marriage of any of the children; or unless it was made before the bankrupt entered into trade, *Crispe* v. *Pratt*, Cro. Car. 545; *Lilly* v. *Osborne*, 3 P. Wms. 298.

Real estate.

All *bonâ fide* payments, made by any bankrupt, before the date and issuing of the commission, shall be deemed valid, notwithstanding a prior act of bankruptcy, provided the party by, or to whom such payment was made, had no notice of it, 6 Geo. IV. c. 16. s. 82; and see sec. 73, *post*.

Personal estate.

It may be laid down, therefore, that marriage settlements of personal estate are valid, if they are *bonâ fide*, and the parties have not notice of any act of bankruptcy.

Where a bond is given by a trader to his wife, or any other person, which is only to be sued upon in case of his failure, insolvency, or bankruptcy; such a security will be void against his creditors, as intended to defeat the operation of the bankrupt laws, and will not be permitted to be proved; *In re Murphy*, 1 Sch. and Lef. 44; see also *Exparte Hill*, 1 Cook, B. L. 228; *Exparte Hennay*, cit. 1 Scho. and Lef. 44; *Exparte Cook*, 8 Ves. 355; *Higginson* v. *Kelly*, 1 Ball and B. 252; *Exparte Hodgson*, 19 Ves. 206; *Exparte Elder*, 2 Madd. 282, and *Wise's* case, Ca. Temp. King, 46. So that it is clear that any security, contingent on the bankruptcy of the husband, cannot be proved under a commission, although, as has before been seen, contingent debts may now be proved, 6 Geo. IV. c. 16. s. 56; and see 3 Byth. by Stewart, 263.

Bonds intended to defeat the operation of the bankrupt laws.

Nor can property belonging to the husband be settled to the use of himself for life, until he should embark in trade, and in the life of his wife become bankrupt—and from his decease or bankruptcy, to secure an annuity to his wife, *Higinbotham* v. *Holme*, 19 Ves. 88; nor will a similar provision, intended to provide against the husband's prospective bankruptcy or insolvency, be good. But the husband's property may be thus settled, if settled in consideration of the wife's fortune, *Higginson* v. *Kelly*, 1 Ball and B. 252. But only to the extent of the wife's fortune, *In re Meaghan*, 1 Sch. and Lef. 179; *Lockyer* v. *Savage*, 2 Stra. 947; *Exparte Cooke*, 8 Ves. 353; and if the settlement is of the husband's money, and it be *not* expressed to be in consideration of the wife's for-

Settlements for a similar purpose, when valid.

tune, the trustee cannot prove, *Exparte Bennet, ubi sup.*; *Exparte Tuaffe,* 1 Gl. and Jam. 110. Even, although the husband receive a considerable fortune with his wife, *Exparte Hill, ubi sup.*; *Exparte Matthews,* 1 Cox, 300. But it is very clear, that the property of the wife may be settled so as to go over on the bankruptcy, or insolvency of the husband, *Lockyer* v. *Savage,* 2 Stra. 947; *Exparte Cooke,* 8 Ves. 853; *In re Meaghan,* 1 Sch. and Lef. 179; in which cases, limitations of the wife's property to the husband, until he should become bankrupt or insolvent, and from that event, for the benefit of his wife and children, were held to be good; and see *Exparte Hinton,* 14 Ves. 598; *Higginson* v. *Kelly,* 1 Ba. and Be. 252; *Exparte Oxley, ib.* 257; *Exparte Verner, ib.* 250; *Exparte Young,* Buck. 157. 3 Mad. 124; *Exparte Hodgson,* 19 Ves. 206.

Wife's equity against assignees of bankruptcy.

As courts of equity direct a husband to make a settlement of the wife's equitable estate on her and the children of the marriage, so they will support any reasonable settlement against his creditors, if he becomes bankrupt, *Moore* v. *Rycault,* Prec. Cha. 22; *Middlecomb* v. *Marlow,* 2 Atk. 518; and where no provision has been made by the husband for the wife, the court has supported a settlement of the whole fund. But where this would be unreasonable, it will be reduced to what is proper, *Pringle* v. *Hodgson,* 3 Ves. 617.

And where the wife is without provision, either from her husband's or her own estate, she will be entitled to a provision out of her own estate, from the assignees of her husband, *Murray* v. *Lord Elibank,* 5 Ves. 737; *Carr* v. *Taylor,* 10 Ves. 574, and the court will even direct the assignees to make her a settlement on her petition, *Exparte Coysegame,* 1 Atk. 192; *Tucker* v. *Parsley,* 3 Ves. 424. A sum covenanted by the husband to be paid when demanded by the trustees at the request of the wife, if demanded before the bankruptcy, is proveable, *Exparte Breachley,* 2 Gl. and J. 174.

Where a settlement is made of the wife's real estate, in consideration of its value, estimated at a fixed sum, being paid by the husband to her trustees; in such a case, if her husband becomes bankrupt, she has a lien, as against his assignees, on his real estates, or any part of them, to the amount of the sum covenanted to be paid, *Exparte Dicken,* 1 Buck, 115.

Women carrying on trade.

A woman on her marriage, may convey her trade to trustees, in order that the same may be carried on for her separate use; see *Dean* v. *Brown,* 2 Car. and Pay. 62. 5 B. and C. 336. 8 D. and R. 95.

Settlements by bankrupts on their children, &c.

By the 73d section of the 6 Geo. IV. c. 16, it is enacted, "That if any bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration), have conveyed, assigned, or transferred to any of his children, or any other person, any hereditaments, offices, fees, annuities, leases, goods, or chattels, or have delivered, or made over to any such person any bills,

bonds, notes, or other securities, or have transferred his debts to any other person or persons, or into any other person's name, the commissioners shall have power to sell and dispose of the same as aforesaid; and every such sale shall be valid, as against the bankrupt, and such children and persons as aforesaid, and against all persons claiming under him."

Under this section, it has been held that the insolvency alluded to, must mean a total insolvency, such as a general inability to pay debts in the ordinary course of trade, or the entering into a composition with creditors; and that evidence that the bankrupt had accepted two bills, prior to the date of the settlement, and which were, from time to time renewed, and ultimately not paid, was not alone sufficient evidence of insolvency, within the meaning of the act, *Cutten* v. *Sanger*, 2 Yo. and Jerv. 512.

Settlements in pursuance of wills—how they will be framed.

Settlements are frequently made in pursuance of wills, and they are always drawn up as near as possible, according to the intention and not according to the literal meaning of the testator; and therefore, most of the rules before mentioned, with respect to settlements, in pursuance of prior articles, apply with nearly equal force to settlements of this description; see *Lady Glenorchy* v. *Bosville*, Ca. Temp. Talb. 3; *Papillon* v. *Voice*, 2 P. Wms. 471. Thus, if the direction is, that the lands should be settled to the son or daughter of the testator for life, and after his or her decease, in trust for the heirs of his or her body; this has been held to imply a strict settlement; *Brampston* v. *Kynaston*, cit. Cas. Temp. Talb. 8; *Roberts* v. *Dixwell*, 1 Atk. 606; *White* v. *Carter*, Ambl. 670; and the result will be the same, if the will contain a direction that the lands should be settled on A., and the heirs of his body, and that care should be taken that A. should not have it in his power to bar the entail, or similar expressions, *Leonard* v. *Earl of Sussex*, 2 Vern. 526; *Earl of Stamford* v. *Hobart*, 1 B. P. C. 288; *Gower* v. *Grosvenor*, Barnardist. 62; *Ashton* v. *Ashton*, 1 Coll Jurid. 402; *Woolmore* v. *Burrows*, 1 Sim. 512. But if a will directs an estate to be conveyed to a man and the heirs of his body, without any further expression of the testator's intention, then he will take an estate tail; *Seale* v. *Seale*, Gilb. Eq. Ca. 105, although in marriage articles, it might be different; and see *Sweetapple* v. *Bindon*, 2 Vern. 536.

What clauses will be inserted.

If it be thought that it was the testator's intention that an estate in strict settlement should be limited, the usual clause for preserving contingent remainders, will always be inserted, although no direction be given concerning it in the will, *Earl of Stamford* v. *Hobart*, 1 B. P. C. 288; and as to what will be inserted in such a settlement, most of the principles applicable to carrying marriage articles into execution, will apply to settlements in pursuance of directions contained in a will.

But unless the testator has directed a settlement, and the legal estate

is conveyed by the will to the trustees, it will not be possible for them to effect a settlement; and the conveyance will then be taken, according to the literal meaning of the will, *Baile* v. *Coleman*, 2 Vern. 670. 1 P. Wms. 142; *Thong* v. *Bedford*, 1 B. C. C. 312. And in a late case, it has been said, that the distinction between settlements made in pursuance of marriage articles, and of wills, is, that in the former, the plain object of consideration in them, the issue of the marriage, guides to the meaning of the articles; in the latter, it can only be collected from the language of the will itself, *per* Leach, V. C. *Deerhurst* v. *Duke of St. Albans*, 5 Mad. 260. But see 12 Ves. 227, *contra*.

Difference between settlements in pursuance of wills, and articles.

Settlements of customary property by freemen.

If a freeman of London or York engages, before his marriage, in writing, that his personal estate shall go at his death, according to the custom of those places, this will prevent his disposing of the whole of his estate by will, as he otherwise might have done, 11 Geo. 1. c. 18. s. 17. but he may thus dispose of one-third, or the *dead man's* share, which would otherwise be divided according to the statute of distributions, 22 and 23 Car. II. c. 10. 1 Jac. II. c. 17. 2 Vern. 111.

But the customary property of a freeman, may of course be the subject of settlement, in such manner as he thinks fit; and even although he has agreed that his personal estate shall go according to the custom, he may bar his widow's claims by a fair and *bonâ fide* disposition in favour of other persons, by which he divests himself of all property in it, 2 Vern. 277; but as such settlement is suspicious, any symptoms of fraud about it will overturn it, *Tomkyns* v. *Ladbroke*, 2 Ves. sen. 591; *Smith* v. *Fellows*, 2 Atk. 62. 7 Vin. Ab. 202, pl. 11; *Turner* v. *Jennings*, 2 Vern. 612. 685; *Fortescue* v. *Hennah*, 19 Ves. 67.

How widow's customary rights may be barred.

The widow's customary rights may also be barred by settlement, previously to marriage. *Hancock* v. *Hancock*, 2 Vern. 665; *Blundel* v. *Barker*, 1 P. Will. 634; *Love's case*, 1 Vern. 6; *Medcalfe* v. *Ives*, 1 Atk. 63; and in London, a settlement of personal estate, providing for the wife, will be presumed, unless there are circumstances to rebut the presumption, *Kirkman* v. *Kirkman*, 2 B. C. C. 95. to be in bar of her customary rights, *Lewin* v. *Lewin*, 3 P. Wms. 15; but a jointure in real estate, will not bar the wife's customary rights, unless it is so expressed, *Babington* v. *Greenwood*, 1 P. Wms. 530; *Benson* v. *Bellasis*, 1 Vern. 15; *Onslow* v. *Onslow*, 1 Sim. 18.

When the provision for the wife is made after marriage, she will be left to her election, as to whether she will take such provision, or her customary rights.

Agreements by persons intending to be freemen.

Persons not already freemen, sometimes agree upon marriage, to take up their freedom, and that their personal estate shall be distributed according to the custom; and if such persons die before becoming

freemen, their personal estates will, nevertheless, be distributable according to the custom, *Frederick* v. *Frederick*, 1 P. Wms. 710.

Honorary freemen are within the operation of the customs of the city of London, *Onslow* v. *Onslow*, 1 Sim. 18. Honorary freemen.

In another part of this work, 2 Byth. p. 80. Stewart's edit. the right of the husband to the *choses in action* of his wife, has been considered. In addition to what is there said, it may be here mentioned, that if the husband, in consideration of all the property of which she then is or may afterwards be possessed, makes a settlement on his wife previously to, and in contemplation of the marriage, he becomes the purchaser of all her personal property, as well equitable as legal, as well in possession as in expectancy, and therefore of her choses in action, 2 Atk. 448. But it must always be distinctly expressed, or the settlement must import it as plainly as if it were expressed, that it is made in consideration of *all* the wife's fortune, as well in possession, as in expectancy, and in action, *Salwey* v. *Salwey*, Ambl. 692; *Druce* v. *Dennison*, 6 Ves. 395; *Carr* v. *Taylor*, 10 Ves. 578; *Heaton* v. *Hassell*, 4 Vin. Ab. p. 40. pl. 11; *Adams* v. *Cole*, Forrest. 168. for otherwise he will be merely entitled to the property she is possessed of at the time of the settlement, *Garforth* v. *Bradley*, 2 Ves. sen. 675; *Burdon* v. *Dean*, 2 Ves. jun. 607; *Mitford* v. *Mitford*, 9 Ves. 89; *contra*, *Blois* v. *Hereford*, 2 Vern. 501; where the adequacy of the settlement was said to be necessary. And where additional property accrues to the wife, not in the contemplation of the parties to the first settlement, the court will order additional settlements to be made on the husband, wife, and children. *Lady Elibank* v. *Montolieu*, 5 Ves. jun. 737; *Adams* v. *Pierce*, 3 P. W. 11. *Carr* v. *Taylor*, 10 Ves. 574; *Beresford* v. *Hobson*, 1 Mad. 371. And if the settlement be made in consideration of *part* only of the wife's fortune, the wife will be entitled to a provision out of such part of the residue as consists of equitable property, *Cleland* v. *Cleland*, Prec. Cha. 63; *Burdon* v. *Dean*, 2 Ves. jun. 609. Settlement by husband of wife's *choses in action*.

Where the settlement which constitutes the husband a purchaser of his wife's *choses in action*, is only executory, and rests merely on his covenant or articles, to execute a settlement; then, if the time has arrived when his covenant should be performed, and if he shall die without performing it, neither he nor his representatives will be entitled to his wife's *choses in action*, until it be performed, nor will the wife's title by survivorship be barred. *Howman* v. *Corrie*, 2 Vern. 190; *Pyke* v. *Pyke*, 1 Ves. sen. 376; *Lister* v. *Lister*, 2 Vern. 68; *Holt* v. *Holt*, 2 P. Wms. 648; *Mitford* v. *Mitford*, 9 Ves. 96; but if the time of performing it be future and contingent, as after his death, then, as the covenant may never be performed, he shall be entitled to receive them immediately, *Basevi* v. *Serra*, 14 Ves. 313. 3 Meriv. 674. Where the settlement is only executory.

But if the wife is of age, and the settlement has been made before

marriage, or in pursuance of articles after marriage, and is expressed to be in consideration of *all* her property, its adequacy will not be enquired into, for as she has accepted it, it will be deemed sufficient, *Adams* v. *Cole*, Forrest. 168: but if the settlement is made after marriage, then its adequacy will be adverted to, and if it be inadequate, a proper settlement will be directed, *Lanoy* v. *Duke of Athol*, 2 Atk. 248; *Stackpole* v. *Beaumont*, 3 Ves. 98. But in *Stamper* v. *Barker*, it was held, that a feme covert was incapable, in a deed of separation, of barring her right of survivorship, although her father was a party to the deed, 5 Mad. 157. In this case however it should be noticed, that the feme covert was also an infant.

How the wife's right of survivorship will be barred.

If there be no settlement, and the *choses in action* are not reduced reduced into possession by the husband in his lifetime, the wife's right of survivorship in them will not be barred by an order of the court of Chancery for a settlement, *Macauley* v. *Philips*, 4 Ves. 15. *contra*, *Packer* v. *Windham*, Prec. Cha. 412; but it will be barred by an order or decree, directing payment to the husband, *Forbes* v. *Phipps*, 1 Eden, 02; *Heygate* v. *Annesley*, 3 B. C. C. by Eden, 362. *contra*, *Adams* v. *Lavender*, I. M'Cl. and Yo. 56.

Wife's reversionary interest in her choses in action.

It is now settled, that the wife's right of survivorship in her *reversionary* interests, whether vested or contingent, in her equitable *choses in action*, cannot be barred by her husband, by an assignment even for a valuable consideration, see 2 Byth. by Stewart, 83.

The case there cited as decided by the present Lord Chancellor, has since been reported; and as it is of great importance, it will here be considered at some length.

Honner v. *Morton*.

In *Honner* v. *Morton*, 3 Russ. 65, the circumstances were shortly as follow: Anthony Calvert, by his will, 1808, bequeathed the residue of his estate to trustees, upon trust, to invest a certain share of it in the public funds, or on real securities, and to pay one half of the interest or dividends to Eleanor Torrie for her life; the other half to Susannah Brewer, during her life; and he directed, that after the death of the tenants for life respectively, the trustees should transfer the principal monies and funds, in equal shares, to the two daughters of Eleanor Torrie, then living. The testator died in the following December, and a sum of 14,395*l.* three per cent consolidated bank annuities, was placed in the name of the trustees, as that part of the residue in which Eleanor Torrie and Susannah Brewer were interested.

Eleanor Torrie, the tenant for life of one moiety of the fund, had two daughters at the date of the will. She died on the 1st of April, 1824. Mrs. Brewer, the tenant for life of the other moiety of the fund, was still living.

The plaintiff, one of the two daughters of Eleanor Torrie, was, at the date of the will, and at the death of the testator, the wife of John Honner; and he died in January, 1817, before his wife's reversionary interest fell into possession.

During the coverture, Mr. and Mrs. Honner executed indentures, dated in March, 1814, November, 1814, January 1816, and November 1816, by which they assigned for valuable consideration, to different purchasers, various portions of the trust fund, to which Mrs. Honner would be entitled on the death of her mother and Mrs. Brewer.

The assignment of November, 1816, was made to one Streater. Mrs. Honner, after the death of her husband, agreed to sell to Streater a further portion of the fund; and this agreement was carried into effect by an indenture, 1817, which was indorsed on the indenture of November, 1816. This endorsed deed, was made between Mrs. Honner, of the one part, and Streater of the other part; it recited that Streater was entitled under the within written indenture, to a certain portion of the fund, and referred to the other assignments; and it purported to transfer the property to Streater, subject to these assignments.

On the 4th of May, 1824, Mrs. Honner filed her bill, insisting that the assignments, made while her husband and the tenant for life were both alive, did not bind her; and praying, that her portion in the fund might be transferred to her.

The principal question was the same that arose in *Purdew* v. *Jackson*, 1 Russ. 1; namely, whether, when a husband and wife have assigned to a purchaser for valuable consideration an ascertained fund, in which the wife has a vested reversionary interest, expectant on the death of a tenant for life, and the wife and the tenant for life both outlive the husband, the wife is entitled by right of survivorship to claim the whole of the fund against such particular assignee for a valuable consideration.

The Lord Chancellor.—This was a *chose in action* of the wife; it was her reversionary *chose in action*. Whether the husband has the power of assigning his wife's reversionary interest in a *chose of action*, is a question which has been repeatedly agitated, and has excited considerable interest, both at law and in equity: at law the *choses in action* of the wife belong to the husband, if he reduces them into possession; if he does not reduce them into possession, and dies before his wife, they survive to her. When the husband assigns the *chose in action* of his wife, one would suppose, on the first impression, that the assignee would not be in a better situation than the assignor; and that he too must take some steps to reduce the subject into possession, in order to make his title good against the wife surviving. *But equity considers the assignment by the husband as amounting to an agreement that he will reduce the property into possession*; it likewise considers what a party agrees to do, as actually done; and, therefore, where the husband has the power of reducing the property into possession, *his assignment of the chose in action of the wife, will be regarded as a reduction of it into possession*. On the other hand, I should also infer, that where the husband has not the power of reducing the

chose in action into possession, his assignment does not transfer the property, till, by subsequent events, he comes into the situation of being able to reduce the property into possession; and then his previous assignment will operate on his actual situation, and the property will be transferred.

Such are the views which would occur to the mind, if there were no cases or authorities on the subject; but the question has frequently been under the consideration of the courts; and it is material to consider what the authorities are, both on the one side and on the other.

[His lordship then went through the principal cases.]

Thus it appears, that there is no distinct decision at variance with the judgment of Sir Thomas Plumer [in *Purdew* v. *Jackson*, 1 Russ. 1.], and if some *dicta* can be cited against it, these are opposed by conflicting *dicta*. Therefore when I consider the principle which I originally laid down, that where a husband assigns an interest belonging to his wife, and thereby agrees to do every thing in his power to make that assignment effectual, the assignment will be valid against the wife, only in those cases in which he is able to reduce the thing into possession; when I further find that principle supported by the opinions expressed by Sir William Grant, and by two distinct decisions of Sir Thomas Plumer; and when I find, on the other side, no opposing decisions, I confess I revert to my original opinion; the opinion which I should have pronounced, if the subject had been untouched by authority; that the husband has no power to give effect to a conveyance of property of this description, unless circumstances so turn out as to have put him in a situation which enabled him to have the *chose in action* into possession. If, at the time of the assignment, he is in a condition to reduce the *chose in action* into possession, the assignment operates immediately: if he is afterwards in a condition to reduce the thing into possession, the assignment will then have full effect; but if he dies before the event happens on which the *chose in action* may be reduced into possession, the assignment becomes altogether inoperative. See also *Wilson* v. *Dennis*, 3 Russ. 90. *Crowder* v. *Stone*, 3 Russ. 224.

It will be seen, that whilst this case fully settles the principle mentioned above, it also favours another point of importance, which was, however, before determined—that the husband can assign for a valuable consideration a fund belonging to the wife, which he might have reduced into possession; and that the assignment of such a fund is in itself a reduction of it into possession.

The state of the law on this subject, stands pretty nearly as follows: It is quite clear, that the assignment effected by the husband's bankruptcy, will not bar her right of survivorship in her reversionary interests, and will not be considered a reduction into possession. *Parker* v. *Dykes*, 1 Eq. Ab. 54. *Grey* v. *Kentish*, 1 Atk. 280; Cox, note 1, P. W. 459. *Gayer* v. *Wilkinson*, 1 B. C. C. 50 *n.*; 2 Dick. 491. *Mit-*

ford v. *Mitford*, 9 Ves. 87. But see *contra*, *Bosvil* v. *Brandon*, 1 P. Wms. 458. *Pringle* v. *Hodgson*, 3 Ves. 617. Nor will her right be barred by the assignment under an insolvent debtors' act. *Hornsby* v. *Lee and others*, 2 Mad. 16, stated 2 Byth. 80. *Wright* v. *Rutter*, 2 Ves. jun. 676. Nor will her right be barred by her consent given on a separate examination. *Richards* v. *Chambers*, and *Seaman* v. *Duill*, 10 Ves. 580. *Wollands* v. *Crowther*, 12 Ves. 174. *Pickard* v. *Roberts*, 3 Mad. 384. *Wade* v. *Saunders*, 3 Mad. 384. *Johnson* v. *Johnson*, 1 J. & W. 472. But where the *chose in action* is *immediate*, and the husband assigns it for a valuable consideration, the wife will be barred. *Bates* v. *Dandy*, 2 Atk. 207; more fully given, 3 Russ. 72, n.; *Burnet* v. *Kinaston*, 2 Vern. 401; *Cartaret* v. *Paschall*, 3 P. W. 147. *Saddington* v. *Kinsman*, 1 B. C. C. 44. *Johnson* v. *Johnson*, *ubi sup.* *Purdew* v. *Jackson*, *ubi sup.*; and the case of *Honner* v. *Morton*, carries the principle to the extent that the assignment by the husband, of a fund which he might himself have reduced into possession, will be deemed to be a reduction into possession.

It seems quite clear, that all the right of the wife to *choses in action*, and to her reversionary interest in them, may be barred by a settlement made before marriage.

Where a post-nuptial settlement will entitle husband to choses in action.

We are now shortly to enquire, where a settlement made after marriage, will entitle a husband to his wife's *choses in action*. And, as to this, it seems to be clear that no transaction merely between the husband and wife after marriage, will entitle the husband or his representatives to such property, as against the wife's title by survivorship, (as to which, see 2 Byth. by Stew. p. 80.) but that the wife's father, or guardian, must be a consenting party to such settlement, *Lanoy* v. *Duke and Duchess of Athol*, 2 Atk. 448. Sanders' edit. *unless* an additional provision is thereby made for the wife, *Sykes* v. *Meynal*, 1 Dick. 368; *Stamper* v. *Barker*, 5 Mad. 157; although the Vice Chancellor, in the last case, thought that the concurrence of the father or guardian, in a post nuptial settlement, was not conclusive; but that case mainly turned on the *infancy* of the feme covert.

Settlements of property to the separate use of married women.

Trusts for the separate use of a married woman, may either be created before, or during marriage. Before marriage, they may be created by the woman herself, of her own property; and, if she pleases, she may thus settle the whole of her property, provided her intended husband concur in such settlement; and she may thus enable herself to carry on trade independently of her husband, *Jarman* v. *Woolloton*, 3 T. R. 618; *Haselinton* v. *Gill*; there cited, *Dean* v. *Brown*, 3 Car. and Pay. 62. Or, a trust of this nature may be created by the intended husband, or by a stranger; and these two last may create it after mar-

riage: but the wife has not this power of disposing of her property when married, except it be given her by the settlement.

What property may be conveyed to separate use of married woman.

It seems to be now completely settled, although originally with very little reason, that a term of years cannot be conveyed to trustees for the separate use of a married woman, and that the consent of the husband to such a disposition makes no difference, unless he is a party to the deed of settlement, *Turner's case*, 1 Vern. 7; *Pitt* v. *Hunt*, 1 Vern. 18; Freem. 78; 3 Cha. Ca. 73. Eq. Ca. Ab. 58; *Tudor* v. *Sauryn*, 2 Vern. 270. Eq. Cas. Ab. 58; *Parker* v. *Windham*, Prec. Cha. 419; *Bates* v. *Dandy*, 2 Atk. 208; *Jewson* v. *Moulson*, 2 Atk. 421; 3 Atk. 430.

But except this, although a married woman can hold no separate property by the rules of common law, yet in equity she may, through the medium of a trustee, enjoy all other property to her own use, as freely as if she were unmarried, *Coomes* v. *Elling*, 3 Atk. 679; and if there be no other trustee appointed, the husband will be constituted into a trustee for the benefit of the wife, *Bennet* v. *Davis*, 2 P. Wms. 316; *Darley* v. *Darley*, 3 Atk. 399; *Fettiplace* v. *Gorges*, 3 B. C. C. 8; *Rich* v. *Cockell*, 9 Ves. 369; *Parker* v. *Brooke*, 9 Ves. 583; *Rolfe* v. *Budder*, 2 P. Wms. 316; 2 Eq. Ca. Ab. 153; and her rights are now recognized at common law, 5 T. R. 434.

If property is thus given to her, she will have the complete controul over it in equity, *Sturges* v. *Corp*. 13 Ves. 190; *Wagstaff* v. *Smith*, 9 Ves. 520. This, however, is rarely intended, it being generally wished to preserve the benefit of it to herself free from the claims of her husband or his alienees. If this is desired therefore, directions should be given to the trustees to pay the rents or dividends, &c. to her for her separate use, or to such person as she should appoint, without anticipation; and the direction against anticipation, is strictly necessary in all such clauses, as otherwise she might transfer the benefit to others, *Pybus* v. *Smith*, 3 B. C. C. 347; *Parkes* v. *White*, 11 Ves. 221; *Watts* v. *Dawkins*, 12 Ves. 581; *Whistler* v. *Newman*, 4 Ves. 129; *Jackson* v. *Hobhouse*, 2 Mer. 483; *Ritchie* v. *Broadbent*, 2 Jac. and W. 456.

How the trust should be limited.

A direction to pay rents or dividends to the separate use of married women for life, free from the debts of the husband, or to a married woman for life, "from time to time," or giving her power to appoint "from time to time," will not prevent her absolute alienation, by a sweeping appointment, of her life interest, *Ellis* v. *Atkinson*, 3 B. C. C. 565; *Pybus* v. *Smith*, *ubi. supra*. *Witts* v. *Dawkins*, 12 Ves. 501; *Brown* v. *Like*, 14 Ves. 302; *Acton* v. *White*, 1 Sim. and Stu. 429; *Glyn* v. *Bagster*, 1 Yo. & Jer. 329.

But if the words "from time to time" are used in articles, it seems a clause against anticipation may be inserted in the settlement, *Chassaing* v. *Parsonage*, 5 Ves. 17. *in notis*. But although the restraint upon

anticipation is general in the settlement, yet it will cease on the death of the husband, and she will then be entitled to a transfer of the fund; *Barton* v. *Briscoe*, Jac. 603. And see *ante*, 227. But where the express intention of a settlement, was to secure the fund for the benefit of the wife for life, with a clause against anticipation, the court refused to interfere to enable the husband, with the wife's consent, to cancel the trust, *Ritchie* v. *Broadbent*, 2 Jac. and W. 450. And see, 2 Byth. 78. *et seq.*

When wife may dispose of her property.

If the property be personalty, a simple trust of it to the separate use of a married woman, without any further power, will give her the fullest controul over it, *Whistler* v. *Newman*, 4 Ves. 129; *Sturges* v. *Corp*, 13 Ves. 190; *Brown* v. *Like*, 14 Ves. 302; *Spilling* v. *Rochfort*, 8 Ves. 164; and although it is usual, where the property consists of real estate, to vest the legal estate in a trustee, and to give to the woman a power over it, *Wright* v. *Englefield*, Ambl. 468; *Wright* v. *Cadogan*, 6 B. P. C. 156; *Peacock* v. *Monk*, 2 Ves. 191; yet it seems clear, that a mere agreement by the husband, that she shall dispose of her real estate, or any part thereof, notwithstanding her coverture, will enable her to do so in equity, *Rippen* v. *Dowding*, Ambl. 565; and see *ibid.* 468; *Compton* v. *Collinson*, 1 H. B. 340; but see *Peacock* v. *Monk*, 2 Ves. 191, and Anonymous case, there cited. And a married woman, it is now clearly settled, may dispose of real estate at law, if it is limited to such uses as she shall appoint, *Harris* v. *Graham*, 1 Roll. Ab. 329; *Gibbons* v. *Moulton*, Finch, 346; *Daniel* v. *Ubley*, Latch. 39; *Travel* v. *Travel*, 3 Atk. 711; and 2 Ves. 191. But a married woman cannot dispose of copyholds at common law, except by a surrender made, as a feme sole, *Compton* v. *Collinson*, *ubi sup.* Where a married woman has a power of disposing of real estate, and she and her husband agree to sell, she will not be compelled to exercise her power in favour of the purchaser, *Martin* v. *Mitchell*, 2 Jac. and Walk. 413; and see 1 B. C. C. 21.

If a particular form is prescribed for the instrument by which a married woman is to exercise a power, it was doubtful whether she was confined to that form, or might employ any other, see *Newman* v. *Cartony*, cit. 3 B. C. C. 340; *Socket* v. *Wray*, 4 B. C. C. 483; *Heatley* v. *Thomas*, 15 Ves. 596; and it now seems settled, that if a power given to a married woman to dispose by *will*, and in default of appointment, absolutely to herself, or to any other person concurring with her in her appointment, she may transfer the fund immediately, *Barton* v. *Briscoe*, Jac. 603; citing *Smith* v. *Death*, 5 Mad. 351; *contra*, *Socket* v. *Wray*, *ubi sup.* But a transfer of the fund will not be directed in the lifetime of the wife, either to the wife, or to her nominee, *Anderson* v. *Dawson*, 15 Ves. 532.

Where a husband is trustee for his wife, and aliens the fund to a Alienation of

the fund by the husband.

purchaser, without notice, for a valuable consideration, equity will not interfere on behalf of the wife, *Parker* v. *Brooke*, 9 Ves. 583.

What expressions imply trust for separate use.

Very slight expressions will imply a trust for the separate use of a married woman, see *Darley* v. *Darley*, 3 Atk. 399; *Tyrrell* v. *Hope*, 2 Atk. 558; *Hartley* v *Hurle*, 6 Ves. 540; *Dixon* v. *Olmius*, 2 Cox, 414; *Prichard* v. *Ames*, 1 Turn. 222; *Wills* v. *Sayer*, Coop. 283; *Roberts* v. *Spicer*, 5 Mad. 491.

A gift of stock to trustees, to pay dividends to a married woman for her separate use, not limited to her life, or any other period, gives her an absolute right to the principal; *Elton* v. *Shepherd*, 1 B. C. C. 532; *Haig* v. *Swiney*, 1 Sim. and Stu. 487; *Smith* v. *King*, 1 Russ. 363.

But the intention to give the property to the wife for her separate use must be clear; thus, a direction in a will to one to purchase an annuity in his own name of eighty pounds for the life of the wife of D., will not exclude the legal right of the husband, *Dakins* v. *Beresford*, 1 Cha. Ca. 194; *Brown* v. *Clark*, 3 Ves. 166; nor a direction to pay a sum to a wife "for her use," or "her own use," during her life, with limitations over, *Jacobs* v. *Amyatt*, 1 Mad. 376, n.; *Wills* v. *Sayers*, 4 Madd. 409; *Roberts* v. *Spicer*, 5 Madd. 491; *Exparte Beilby*, 1 Gl. and Jam. 167.

If it can be clearly proved that a husband made a gift to the wife, he will be held to be a trustee for her; as if he transfers a sum of stock into her name, this will be held to be a gift to her separate use, 5 Ves. 71; and see *Lucas* v. *Lucas*, 1 Atk. 270; *Graham* v. *Londonderry*, 3 Atk. 393; *Slanning* v. *Style*, 3 P. Wms. 334; but such gifts are always looked upon with suspicion, *Walter* v. *Hodge*, 2 Swans. 92.

When heir of wife will be bound.

An agreement between a husband and wife before marriage, that she shall dispose of her freehold estates, will bind her heir, and he will be a trustee for her appointee, *Wright* v. *Cadogan*, 2 Eden, 239; 1 B. P. C. 486, S. C. *Rippon* v. *Dowding*, Ambl. 565; but the heir will not be bound, if the agreement is after marriage, *Dillon* v. *Grace*, 2 Sch. and Lef. 463; and the same rules apply to the wife's equitable property, *Wright* v. *Cadogan*, *ubi sup.*; *Wright* v. *Englefield*, Ambl. 468.

Difference between limitations of real and personal estate to wife's separate use.

But there is a difference which should be noticed, between real and personal estate, when they are limited to the separate use of the wife, and are unaffected by any agreement between her and her husband. If the property be personal, this limitation will give the wife a complete power of disposing of it in favour of mere volunteers, although no particular form is prescribed in the instrument for the purpose, *Fetteplace* v. *Gorges*, 1 Ves. jun. 46. 3 B. C. C. 8. S. C. *Rich* v. *Cockell*, 9 Ves. 369; and whether the property be in reversion or in possession, *Sturgis* v. *Corp*, 13 Ves. 190. But if real property be given in trust to pay the rents and profits to her separate use, and there is no contract between the husband and wife, that she may dispose of it, and no power of dispo-

sition is given her by the instrument so limiting it; she cannot convey it, at common law, *Doe* d. *Stevens* v. *Scott*, 1 Moor. and Pay. 317; 4 Bing. 505, S. C; except by fine or recovery, or in equity, *Anon.* 2 Ves. sen. 192. 1 Sand. Us. 345.

It is quite clear, that a married woman having a power over property, may execute it in favour of her husband, *Wagstaff* v. *Smith*, 9 Ves. 520, and the trustee's assent or dissent to such a disposition, is of no consequence, *Essex* v. *Atkins*, 14 Ves. 542, and his joining in it, is therefore no breach of trust, *Parker* v. *White*, 11 Ves. 225.

Pin-money—when it will be supported.

Here we may shortly advert to what is generally called pin-money. An annual allowance from the husband to the wife, although void at law, will be supported in equity, 1 Atk. 271; and if it is made by settlement, or articles before marriage, it will be good against creditors, as has before been seen. But if made after marriage, it must be reasonable and equitable. Thus a gift by the husband to the wife of *all* his property, will not be supported, even in equity. *Beard* v. *Beard*, 3 Atk. 72. These allowances, whether great or small, are usually known by the general term of *pin-money*, and cannot be disposed of by the wife by a sweeping appointment. *Hyde* v. *Price*, 3 Ves. 437.

Arrears—when recoverable.

If there be a sum settled on the wife by way of pin-money, and she allows it to run considerably in arrear, she will be held to have waived her claim to it, and she will only be permitted, on her husband's death, to claim one year's arrear. *Aston* v. *Aston*, 1 Ves. sen. 267. *Peacock* v. *Monk*, 2 Ves. sen. 190, 267. But if she demanded her arrears without success, or there are any other circumstances to rebut the presumption of waiver, she will be entitled to all her arrears. *Thomas* v. *Bennett*, 2 P. W. 341; 1 Ves. sen. 267. *Ridout* v. *Lewis*, 1 Atk. 269. *Brodie* v. *Barry*, 2 Ves. & Bea. 39. But if the money is to be given for the wife's cloaths, or other special purposes, and they are otherwise provided for by the husband, the wife cannot claim her arrears. *Fowler* v. *Fowler*, 3 P. Wms. 355. *Powell* v. *Hankey*, 2 P. Wms. 84. *Thomas* v. *Bennett*, 2 P. Wms. 341.

When wife may enforce payment.

If the pin money be secured by a settlement, it seems the wife may enforce a payment of it, although she has eloped from her husband, *Moore* v. *Moore*, 1 Atk. 276; and has committed adultery. *Sidney* v. *Sidney*, 3 P. Wms. 269. *Blount* v. *Winter*, 3 P. Wms. 277, *in notis*. *Seagrave* v. *Seagrave*, 13 Ves. 444. *Field* v. *Serres*, 1 New Rep. 121; but see 2 Eq. Ca. Ab. 156.

And the strict rule as to the recovery of a year's arrear will not be relaxed, although the obligation as to pin money is treated as a debt. As, for instance, where the husband, the pin money being in arrear, gave his wife a note for it as a debt, and then directed the payment of

his debts by will, only a year's arrear was decreed. *Cornwall* v. *Earl of Montague*, 1 Eq. Ca. Ab. 66. But see *Lady Warwick* v. *Edwards*, 1 Eq. Ca. Ab. 140.

But the arrears may be recovered by a bill in equity, although common law powers of distress and entry are given in the settlement, *Cupit* v. *Jackson*, 13 Pri. 721.

Wife's equity for a settlement.

So proper and just is a settlement on a wife and children considered by courts of equity, and so much for the good of all parties, that it will seize upon every fair opportunity to enforce it.

Settlement of wife's equitable property.

Thus, where a *chose in action* belonging to the wife, is assignable and recoverable at law, by the husband and his assignee, a court of equity cannot interfere to procure a provision for the wife, as he claims no assistance from equity, 2 Ves. jun. 608. 682. *sembl. contra*, *Ellis* v. *Ellis*, 1 Vin. Ab. 475. 2 Atk. 420. But where the property, though in its nature legal, becomes from collateral circumstances the subject of a suit in equity, *Exparte Blagden*, 2 Rose, 251; *Adams* v. *Pierce*, 3 P. W. 11; *Oswell* v. *Probert*, 2 Ves. jun. 680; and *a fortiori* where the property is wholly equitable in its nature, as a share of an intestate's effects, or money paid into court which belongs to the wife, if the husband or his assignee applies to a court of equity for the recovery of it, that court will stipulate that a provision shall be made out of it for his wife and children, 2 P. Wms. 639; *Harrison* v. *Buckle*, Stra. 238; *Macauley* v. *Philips*, 4 Ves. 17; and a husband suing in the ecclesiastical court for a legacy, or money belonging to his wife, will be restrained by a court of equity, until a proper settlement is made, *Nicholas* v. *Nicholas*, Prec. Cha. 548; *Gardner* v. *Walker*, 1 Str. 238. 503; *Meales* v. *Meales*, 5 Ves. 517. 739, n.; *Tanfield* v. *Davenport*, Toth. 114; *Jewson* v. *Moulson*, 2 Atk. 420; *contra*, *Andrews* v. *Craddock*, Wy. P. R. 248. But the whole of the property need not be settled; the court will be satisfied if a reasonable part, generally one-half, is so dealt with, *Beresford* v. *Hobson*, 1 Madd. 363; *Jewson* v. *Moulson*, 2 Atk. 423; *Worrall* v. *Marlar*, 1 Cox, 153; *Pringle* v. *Hodgson*, 3 Ves. 620; *Steinmetz* v. *Halthin*, 1 Gl. and Jam. 64; but all the circumstances will be taken into consideration by the court, *Green* v. *Otte*, 1 Sim. & Stu. 250.

Wife may enforce her claim by bill.

The wife, it is now settled, may enforce her right to a provision out of all equitable property, by a bill in equity, suing by her next friend against her husband, or those claiming under him. *Elibank* v. *Montolieu*, 5 Ves. 737; *Gardner* v. *Walker*, 1 Stra. 503; *Ellis* v. *Ellis*, *ubi sup.*; *Roberts* v. *Roberts*, 2 Cox, 422; and it would seem that she might obtain the same benefit by petition. *Exparte Coyngame*, 1 Atk. 192; *Gray* v. *Kentish*, ib. 230.

But in such a suit, the husband should always be a substantial party

to the suit, it being against the legal *jus mariti*; but by making him a co-plaintiff, he admits the statement of the bill, and it answers the purpose of making him defendant, *Smyth* v. *Myers*, 3 Mad. 474.

A purchaser or assignee from the husband, although for a valuable consideration, will not be in a better condition than the husband against the wife, *Salisbury* v. *Newton*, 1 Eden, 370; *Roberts* v. *Roberts*, 2 Cox. Rep. 422; *Wenman* v. *Mason*, 1 P. Wms. 549; *Macauley* v. *Philips*, 4 Ves. 19; *Elliott* v. *Cordell*, 5 Mad. 149; but see *Pulvertoft* v. *Pulvertoft*, 18 Ves. 84. where Lord *Eldon* seems not to have admitted this principle to its fullest extent.

Where children may claim a settlement.

But this equity is personal to the wife, and does not extend to her children, who cannot oblige their father to make a provision for them, *Scriven* v. *Tupley*, Ambl. 509; *Murray* v. *Lord Elibank*, 10 Ves. 84; *Lloyd* v. *Williams*, 1 Mad. 450; but see 13 Ves. 7. However, when once the suit is instituted, relating to the trust fund, the right of the children to a settlement attaches, although the wife dies pending the suit, *Murray* v. *Lord Elibank*, 10 Ves. 88; *Rowe* v. *Jackson*, 2 Dickens, 64; *Steinmetz* v. *Halthin*, 1 Gl. and Jam. 64; which last case has carried the principle farther than any other, See 13 Ves. 1. But if an order, not providing for the children, has been acquiesced in for a long time, the children will not be entitled to any provision, as against the wife, *Johnson* v. *Johnson*, 1 Jac. and Walk. 479. Whether the wife, if a settlement be once proposed, during the life of her husband, can alter the rights of the children, is a matter of some doubt; *Lord Hardwicke*, *Anon.* 2 Ves. sen. 672, thinking that she could not; and *Lord Eldon*, 10 Ves. 88, 89, being of opinion that she has this power at any time; and see *Lloyd* v. *Williams*, 1 Mad. 466; the better opinion seems to be that of *Lord Eldon*.

Where the husband of a woman, entitled to a fund in a cause, signed after the marriage a written agreement, that he would settle half the wife's fortune upon her; it was held by *Sir John Leach*, V. C. that the benefit of the agreement accrued to the children of the marriage, and that therefore the wife could not wave it, *Fenner* v. *Taylor*, 1 Sim. 169.

Wife may assent that the fund may be paid to the husband.

But the wife, before any settlement is proposed, may certainly consent that the whole of the property shall be paid to the husband, *Willats* v. *Cay*, 2 Atk. 67; but she must be separately examined, and such consent must be clearly proved; and if she is abroad, or cannot appear in court, it must be taken by commissioners, appointed for that purpose by the court, *Tasburgh's* case, 1 Ves. and Bea. 507. 2 Ves. sen. 60.

Mode of separate examination of married women.

The mode of obtaining a wife's assent, is as follows; see Claney's Rights of Married Women, 538, 3d edition, from which useful work these directions are taken.

The examination of the wife, preparatory to the waiver of her equity, must take place, either before the judge in whose court the cause is in-

stituted, or before commissioners, specially appointed by that court for the purpose. If the wife be in town, she must be examined before the court; and if she be abroad or in the country, a commission issues, directed to certain persons, to examine her at the place of her abode; but wherever the examination takes place, whether before the court or elsewhere, it must be separate and apart from her husband. When the examination is taken under a commission, the commissioners should examine the wife apart, and enquire from her in what manner, and to what uses she is willing that the money mentioned in the order for her examination should be applied, and they should also at the same time read that order to her, and explain its purport and effect; and in their return to the commission, they should certify that they had performed these requisites; and also that the wife did, on her examination, declare that she was willing and desirous that the money (specifying the amount) might be paid to her husband, for his own use and benefit; and that she did thereby freely and voluntarily consent that the same be paid to him accordingly, *Tasburgh's* case, 1 Ves. and Bea. 507.

Return of commission.

Examination of wife by commissioners must be returned in writing, and signed by her.

The examination also of the wife, must be returned in writing, and signed by her, containing her deposition to the same effect; and her signature to it, as well as the signatures of the commissioners, must be proved by affidavit; and if the return of the commissioners be less full and particular than as above stated, it seems that it would be deemed to be insufficient; for, in a late case, *Tasburgh's case*, where the commissioners certified nothing more than that she had attended them, and that she was examined solely and apart from her husband at his dwelling-house, by virtue of the order of the court, *Lord Eldon* expressed his disapprobation of the return, saying, that "though it was conformable to some late very loose proceedings, it was by no means agreeable to the practice, and to the ancient settled form; and that in future, he would expect that the return to these commissions should be made according to the ancient and proper form;" and his lordship referred to two precedents, which had been produced by the register.

Where wife resides in a foreign country, a commission issues to take her consent.

Where the wife resides in a foreign country, the regular proceeding is to issue a commission to take her consent, *Parsons* v. *Dunne*, 2 Ves. sen. 60; and *Lord Thurlow* refused the petition of the wife to pay her legacy of 167*l.* to her husband's agent, without a commission, although it was represented to his lordship that it would be very expensive, as she lived in Tortola, and the sum was so small, *Bourdillon* v. *Adair*, 3 Bro. C. C. 237. However, it seems, that if the consent of the wife be taken before any competent authority belonging to the foreign state in which she resides, and that her examination be properly attested, a commission will not be required, as in *Minet* v. *Hyde*, 2 Br. C. C. 663, where the wife living at Breda, an application was made that a legacy of 884*l.* 6*s.* 8*d.* which had been bequeathed to her, should be paid to her

Commission dispensed with, where consent taken before competent tribunal of the country where wife resides.

husband; and it was ordered that she should appear before some of the plaintiffs, and a magistrate of Breda, to be privately examined in the French or German language, as to her consent, and the examination to be attested by notaries public, and translated on oath; and indeed, it seems, that if a commission has been issued under the authority of the government of the foreign country, in which the married woman resides, for the purpose of taking her consent, that the court of Chancery will so far give credit to it, as to dispense with the issuing of a commission of its own, for the same purpose: for in *Campbell* v. *French*, 3 Ves. 321, where a commission had been issued from the government of Virginia, and the wife gave her consent under it to a power of attorney, executed by her husband, to receive a legacy, which had been left her in England, *Lord Loughborough* said, he thought that the expense of a commission might be saved, as the proceeding was very regular; and Mr. Dickens mentioned an instance in which, under the particular circumstances of the case, (he does not state them), money was ordered to be paid under a letter of the wife, who was in the East Indies: although upon inquiry and search, not found to have been ever ordered before, *Palmer* v. *Palmer*, 1 Dick. 293.

Where commission issued by the foreign government, under which the wife resides, this court dispenses with a commission from this country.

Money paid on a letter of a married woman residing in the East Indies.

If the wife on her examination, should consent to give the trust fund to her husband, the next step to be taken is that the husband and wife should apply to the court by petition, that the money be paid to the husband, and then it becomes necessary to enquire and ascertain whether the money has been settled or not, with which view it must be referred to the master, *Hardwick* v. *Mynd*, 1 Anst. 270; *Binford* v. *Bowden*, 2 Ves. jun. 38; and the court will require an affidavit from some person competent to make it, that the money has not been settled, before it will suffer it to be removed. This practice seems to have originated with *Lord Thurlow*: for in *Minet* v. *Hyde*, 2 Br. C. C. 663; *Hough* v. *Riley*, 2 Cox's C. C. 157, where a consent of the wife had been taken abroad by commission, and a petition was presented by her and her husband, that the money should be paid to him; his lordship said that for the future, he should expect an affidavit upon such applications, that there was no settlement on the marriage.

On application by husband and wife for wife's money, on her previous consent; an affidavit must be made by a competent person, that it has not been settled.

The following forms, which are necessary in the above matter, may be found useful.

"George the 4th, &c. &c. To A. B., C. D., and E. F., (*commissioners*) greeting: Know ye, that we, in confidence of your prudence and fidelity, have, and by these presents do appoint you, or any two of you, and give you full power and authority, in pursuance of an order of our court of Chancery, in that part of our United Kingdom of Great Britain and Ireland, called England, made in a cause there depending, wherein G. B. is plaintiff, and L. H. and S. H. his wife and others, are defendants, to call before you the said S. H. on such day, and at such

The form of the commission to take the consent of a married woman to waive her equity.

place as you shall appoint, and solely and secretly to examine her separate and apart from her said husband, the said S. H., how and in what manner, and to what uses she is willing and desirous that the said sum of money in the said order mentioned should be applied; and what she should so express on such her examination, you are to certify to us under your hands and seals in our said court of Chancery without delay, together with this writ.

Witness, &c. &c.

JOHN LEACH,
Master of the Rolls."

The return to the above commission.

" To our Sovereign Lord the King in his court of Chancery, in England: We most humbly certify, that pursuant to the order dated the day of , we were attended by the said S. H., the wife of the said L. H., and did, in pursuance of the said order, examine the said S. H. solely and secretly, separately, and apart from her husband, the said L. H., how, and in what manner, and to what uses she was willing and desirous that the said sum of 5000*l.* in the said order mentioned, should be paid and applied: and that we did at the same time read the said order to her, and explain to her the purport and effect thereof; And we do further certify that the said S. H. did on such her examination, say and declare that she was willing and desirous, that the said sum of money might and should be paid to the said L. H. to and for his own use and benefit, and that the said S. H. did freely and voluntarily consent that the same be paid to him accordingly, as by her examination in writing annexed appears.

" All which we certify and submit to your lordship,
this day of ."

Examination thereupon.

The examination in writing of the married woman to be annexed to the above return of the commissioners:—" I, S. H., having been solely and secretly examined by the said commissioners separate and apart from L. H. my husband, how, and in what manner, and to what uses I was willing and desirous that the said sum of 5000*l.* should be paid and applied, do say and declare, that I am willing and desirous that the said sum may and shall be paid to the said L. H., to and for his own use and benefit; and I do freely and voluntarily consent, that the same may be paid to him accordingly.

" Witness my hand this day of

S. H."

Where fund is less than 200*l.*

Where the fund is less than 200*l.*, it is generally paid to the husband on the joint petition of himself and wife, without any separate examination of the latter; and notwithstanding it is suggested, that the petition had not her concurrence, *Elworthy* v. *Wickstead*, 1 Jac. and Walk. 69.

When the wife is the subject of a foreign state, by the law of which her husband would be entitled to receive the *whole* of the fund, without making any provision for the wife, the whole will be paid to the husband, *Sawyer* v. *Shute*, 1 Anst. 63; *Campbell* v. *French*, 3 Ves. 321; *Dues* v. *Smith*, Jac. 544. When the wife is a foreigner.

A court of equity imposes precisely the same terms on the assignees of the husband, if he be a bankrupt, as it does upon him; so that if they have to come into a court of equity to reach any of her property, they must first make a proper and reasonable settlement upon the wife and her children. *Jacobson* v. *Williamson*, 1 P. W. 382; 2 Atk. 420; 2 Ves. jun. 680; 9 Ves. 87; 2 Madd. 16; *Green* v. *Otte*, 1 Sim. & Stu. 250. Wife's equity against assignment in bankruptcy.

Although it is now clear, as we have seen, that an assignment for a valuable consideration will be no protection against this claim of the wife; see *ante*, 343; yet she will not be entitled to this provision out of a trust term in the hands of a purchaser. See *Macaulay* v. *Phillips*, *ubi sup.* *Sir Edward Turner's case*, 1 Vern. 7; *Pitt* v. *Hunt*, ib. 18; *Tudor* v. *Smayne*, 2 Vern. 270. Trust term.

If the husband receive the money, or a transfer of it, before the suit be commenced, the right of the wife and children to a settlement will be defeated. 3 P. Wms. 11; *Glaister* v. *Hewer*, 8 Ves. 206. But after a bill has been filed, the court is constituted the trustee of the fund, and any person would do wrong in paying it over to the husband. *Murray* v. *Elibank*, 10 Ves. 90; *Macaulay* v. *Phillips*, 4 Ves. 18; *Steinmetz* v. *Halthin*, 1 Gl. and Jam. 64. Where money is paid before the suit.

If the wife be living in adultery, apart from her husband, a court of equity will neither assist her husband nor herself to obtain her equitable property, for the husband does not maintain her, and the wife has forfeited her claim to the assistance of the court, by her unworthy conduct, *Carr* v. *Easterbrooke*, 4 Ves. 146; *Ball* v. *Montgomery*, 2 Ves. jun. 191; and in this situation the husband will not be permitted to enjoy the interest of the whole fund, although he will be allowed a reasonable part thereof. *Ball* v. *Montgomery*, *ubi sup.* 4 B. C. C. 339; *Bullock* v. *Menzies*, 4 Ves. 798. Where wife has misconducted herself.

If the husband does not apply for the fund, and declines to make a settlement on the wife, yet, as he maintains her, he will be entitled to receive the annual produce of her property, and he cannot be compelled to make a settlement. *Sleech* v. *Thorington*, 2 Ves. sen. 560; *Bond* v. *Simmons*, 3 Atk. 20. But if the husband should misconduct himself, or if he has already had a large fortune by his wife, the court will prevent his receiving even the interest of the fund. *Bond* v. *Simmons*, 3 Atk. 20; *Green* v. *Otte*, 1 Sim. & Stu. 250. As the husband is only entitled to the annual income of the fund on his maintaining the wife, if his interest therein should pass to others, as to his assignees in When husband will be allowed the interest.

bankruptcy, they will take it, subject to an allowance for the support of the wife. 2 Ves. sen. 607; 4 B. C. C. 139; 3 Ves. 166; 11 Ves 20.

And if the husband desert the wife, or force her to leave him by his ill-treatment of her, he will forfeit his claim, as well to the interest of the fund, as to the fund itself, and the interest will be paid to the wife. *Oxendon* v. *Oxendon*, 2 Vern. 493; Prec. Cha. 229; *Watkyns* v. *Watkyns*, 2 Atk. 96; *Sleech* v. *Thorington*, 2 Ves. sen. 562; *Ball* v. *Montgomery*, 2 Ves. jun. 197; *Atherton* v. *Nowell*, 1 Cox, 229; *Wright* v. *Morley*, 11 Ves. 12. 23; and the husband's fraudulent assignment of the property will not defeat her right to maintenance. *Colmer* v. *Colmer*, Mose. 113. But if the husband offer to maintain her, and she refuses without sufficient reason to reside with him, the court will order the payment of the interest to him, although he will not make a settlement. *Bullock* v. *Menzies*, 4 Ves. 15. But where the husband has been originally to blame, and the offer to live with his wife is open to strong suspicion, then the wife will be allowed sufficient for her support out of the interest. *Watkyns* v. *Watkyns*, 2 Atk. 97; *Atherton* v. *Nowel*, 1 Cox, 229.

Where stock is liable to wife's equity.

Stock or money in the public funds, standing in the name of a trustee for the wife, is equitable property, and the wife is entitled to a settlement out of it. *Wright* v. *Morley*, 11 Ves. 12. But stock standing in the wife's own name, is not equitable property, as the husband may maintain an action against the Bank, in order to compel a transfer of such stock. *Pringle* v. *Hodgson*, 3 Ves. 619; *Wildman* v. *Wildman*, 9 Ves. 176. But the Bank, it seems, has a right to throw difficulties in the way of his obtaining such transfer. *Pringle* v. *Hodgson*, *ubi sup.*

The wife's equity extends to the rents and profits of an estate, in which she has a life interest, *Burden* v. *Dean*, 2 Ves. jun. 607; and her other life interests will be subject to this equity, on the bankruptcy, insolvency, or desertion of her husband, *Pryor* v. *Hill*, 4 B. C. C. 139; but not as against a particular assignee for a valuable consideration. *Elliott* v. *Cordell*, 5 Mad. 149. Where, by a settlement, the husband and wife had an equitable interest in the dividends during their joint lives, and the principal was to be transferred to the survivor, his or her executors, &c. to and for the use of the survivor, and any child or children of the marriage; the court ordered the fund to remain in court during the life of the father, who survived, and the dividends to be paid to him, with liberty to any party interested, to apply to the court at his death. *Chambers* v. *Atkins*, 1 Sim. & Stu. 382.

How equity may be barred.

If the husband have property, and provides for his wife out of it, even after marriage, her equity will be satisfied, and he may then take his equitable property; and this is the more usual mode, where the husband has property to settle. *Middlecomb* v. *Marlow*, 2 Atk. 520.

A settlement carrying into effect the wife's equity, although made after marriage, will be good against creditors; and although the husband was indebted at the time of the settlement, at whosoever instance it may have been made, *Moor* v. *Rycault*, Prec. Cha. 22; *Hinton* v. *Scott*, 336; *Mindlecombe* v. *Marlow*, 2 Atk. 519. The settlement which will bar this right of the wife, has before been mentioned. See p. 337. It remains only to observe, that the wife's equity will also attach, on an accession of fortune to her, although there was a settlement before marriage upon her, if it did not include such additional property. *March* v. *Head*, 3 Atk. 720; *Tomkyns* v. *Ladbrohe*, 2 Ves. sen. 591: Anon. 2 Ves. sen. 671. Settlement good against creditors.

It may be laid down as a principle, which extends through the whole subject of which I am now treating, that any fraud, concealment, or misrepresentation, committed by any party connected with the marriage contract, will be void, and be construed, if possible, to the prejudice of the party committing it; so important has it always been held, that the contract of marriage should only be entered into by persons precisely acquainted with their rights, duties, and responsibilities. Fraud, concealment, &c. by any party to the marriage contract.

Thus it is, that if a person agrees to settle an estate upon one of the parties, and then secretly prevails upon the party to release him from his bargain, the release will be held to be void. *Peyton* v. *Bladwell*, 1 Vern. 240; *Lanlee* v. *Hannam*, 2 Vern. 499. So an agreement to return a part of the wife's portion, will be void. *Turton* v. *Benson*, 2 Vern. 746; and 10 Mod. 445. *Butler* v. *Chauncey*, cit. 1 Eq. Ca. Ab. 88. *Debenham* v. *Ox*, 1 Ves. 277. And any such agreement, if entered into by the wife, will be equally void against the husband and herself, both at law, *Collins* v. *Wills*, Cro. Eliz. 774, and in equity, *Gale* v. *Lindon*, 1 Vern. 475; 3 P. Wms. 69. So a secret agreement by the husband, to indemnify a third person against a jointure made upon his wife, will be void, and the jointure will be decreed to be made. *Palmer* v. *Neave*, 11 Ves. 165. Nor will such agreements be valid, even although they are entered into for a valuable consideration. *Roberts* v. *Roberts*, 3 P. Wms. 74. Contracts in derogation of the marriage contract.

And it should be observed, that secresy is not a necessary ingredient to the invalidity of these agreements, as they will be equally void if publicly entered into, their tendency being evidently to deceive or defraud the other parties to the marriage. *Roberts* v. *Roberts*, *ubi sup.* So also, they are equally void if entered into after the marriage, as before. *Peyton* v. *Bladwell*, 1 Vern. 240. *Roberts* v. *Roberts*, *ubi sup.*

Securities in derogation of the marriage contract cannot be assigned, even for a valuable consideration, being invalid in every person's hand. *Coles* v. *Jones*, 2 Vern. 692. *Turton* v. *Benson*, 2 Vern. 746. Nor can such securities or agreements be confirmed, *Shirley* v. *Martin*,

3 P. Wms. 74; Cox's note. And if a sum of money has been paid under such an agreement, it may be recovered back again by a bill in equity. *Goldsmith* v. *Browning*, 2 Vern. 392. And it is no objection to a bill for avoiding such a contract, that the party filing it is *particeps criminis*, 3 P. W. 74.

Feigned conveyances and contracts, in order to bring about marriages.

Thus also, if a person, in order to enable another to effect a marriage by giving him the appearance of being wealthy and respectable, shall convey property to him, or shall give him security for money, as a bond, and thus endeavour to deceive the other parties to the match, such conveyance or security will be held to be binding on the person conveying or giving it. *Montefiore* v. *Montefiore*, 1 B. C. C. 363; 1 B. C. C. 548. So if a person, to facilitate the marriage of another who is in debt, take the debt upon himself, and give the creditor a security for it, but at the same time takes a counter security from the original debtor, he will be compelled to pay the debt, and the counter security will be set aside. *Redman* v. *Redman*, 1 Vern. 348. So any false representation which may reasonably be supposed to induce a party to consent to a marriage, will be held to operate against the party making it. *Neville* v. *Wilkinson*, 1 B. C. C. 543. *Scott* v. *Scott*, 3 Ves. 458. And so far has this principle been carried, that if a person interested in the matter; as, for example, the mother of a party, should stand by and should not contradict false declarations made by such party, as to the state of the property, such person will be bound by those declarations, and will be decreed, if it be possible, to carry them into effect. *Hunsden* v. *Cheney*, 2 Vern. 250. *Raw* v. *Pole*, 2 Vern. 239. *Berrisford* v. *Milward*, 2 Atk. 49. *Webber* v. *Farman*, 2 B. P. C. 88. And even where no fraud exists, but persons being ignorant of their rights in property, are privies to a marriage settlement of it, they will not be permitted to overturn the settlement, when they come to a more correct knowledge of their interests. *Teasdale* v. *Teasdale*, Cas. Temp. King. 59. *Hunsden* v. *Cheney*, *ubi sup.* *contra*, *Dyer* v. *Dyer*, 2 Cha. Ca. 108. And the same rule seems to prevail, even where the conveyance of the property was obtained from the party by fraud. *Beverley* v. *Beverley*, 2 Vern. 133.

So also in a late case, where a father having by his will provided for a daughter, afterwards, on an accession of fortune, expressed his intention to make a new will, and charge his estate with the farther sum of 4000*l.* for her; but died soon after without executing such intention, when his eldest son promised by letter that he should fulfil it; the daughter married on the faith of the promise, and the son was decreed to perform his promise, and to pay the sum of 4000*l.* *Montgomery* v. *Reilly*, 1 Dow. N. S. 62; and 1 Bli. N. S. 364.

Particeps criminis.

The husband or wife, although *particeps criminis*, may file a bill to

establish the feigned settlement or security, 3 P. Wms. 74. 1 Vern. 348; as may any other party claiming under the settlement, whose claim rests upon a valuable consideration. But it seems that the bill must be filed in the life time of some person whose claim is supported by a valuable consideration. *Raw* v. *Pole*, 2 Vern. 239.

The subject of marriage brocage bonds, and other securities taken on procuring the marriage of any person, has been already treated of. See 3 Byth. 326.

Settlements in derogation of the marital rights.

In pursuance of the same principle, the free settlement of a woman's property is restricted on her marriage. Thus, after a treaty of marriage has been commenced, the intended wife cannot make any disposition for her own benefit of her property, whether real or personal, without the consent of the husband, which will be binding on him; and the making the settlement at this time will be in itself indicative of fraud. *Howard* v. *Hooker*, 2 Cha. Rep. 81. 1 Eq. Cas. Ab. 59; *Countess of Strathmore* v. *Bowes*, 2 Cox, 28, 1 Ves. jun. 28. 2 B. C. C. 345. 6 B. P. C. 427; *Ball* v. *Montgomery*, 2 Ves. jun. 194; although other circumstances evidencing fraud are generally shewn, as a declaration by the intended wife that the husband shall enjoy the property. *Carlton* v. *Earl of Dorset*, 2 Vern. 17, 2 Cox 33; *Draper's* case, Freem. 29; *King* v. *Cotton*, 2 P. Wms. 359, 674. But a settlement would, it seems, be good, if it be made in favour of children by a former marriage, *Blithe's* case, Freem. 92; *Hunt* v. *Mathews*, 1 Vern. 408; and see *King* v. *Cotton*, 2 P. Wms. 358, 674. But it is quite clear, that if the settlement is made *before* the commencement of the treaty of marriage, if it be for a meritorious object, as to provide for the wife's children by a former marriage, although it is not mentioned to the husband, it will be good against him. *King* v. *Cotton*, *ubi supra*; *Countess of Strathmore* v. *Bowes*, 2 B. C. C. 345 and 1 Ves. jun. 22, S. C.; *contra*, *Poulson* v. *Wellington*, 2 P. Wms. 533. So also the payment of a debt, or the dealing with a trifling part of her property, by the intended wife, although on the eve of marriage, as the giving a bond even with a direction to conceal it, *Blanchet* v. *Foster*, 2 Ves. sen. 264; or the release of a small legacy, *Thomas* v. *Williams*, Mose. 177, will not be fraudulent.

And if the husband concur in the settlement, although he be a minor, yet it will be valid. *Slocombe* v. *Glubb*, 2 B. C. C. 545; 1 Ves. jun. 28; and his being a party to the deed is not absolutely necessary, as his concurrence and notice of the deed may be proved in any other way. *Draper's* case, 2 Freem. 29; *Blithe's* case, ib. 97; *Newstead* v. *Searle*, Atk. 264.

If the settlement be made by the wife for her separate use in con-

templation of a marriage which never takes place, and she then marry another husband, the settlement will not be void, as it was not intended to deceive *him*. *Lady Strathmore* v. *Bowes*, *ubi supra*; but see 1 Russ. 495; but if it be made to deceive her intended husband, the greater or less interval between the date of the instrument will not alter the principle of its invalidity. *Goddard* v. *Snow*, 1 Russ. 485. If a woman, having a settlement made on her to her separate use by her first husband, conceal this fact from her second husband on the treaty for marriage, the settlement will be void as against him. *Edwards* v. *Denington*, cit. 2 Vern. 17; and see 1 Ves. jun. 26; but it may be observed that this case, to which considerable doubt attaches, pushes the principle now discussed to a very extraordinary extent, where it interferes with the intentions and arrangements of third persons; and is, perhaps, not likely to be followed, or at least carried any further.

If a woman, immediately before marriage, without the knowledge of her intended husband, agree to pay a sum of money to a person to whom she does not owe it, such an agreement will be fraudulent, as respects the intended husband. *Lance* v. *Norman*, 2 Chan. Rep. 79; *Cotton* v. *King*, 2 P. Wms. 360.

For further information on Marriage Settlements, the reader may consult Mr. Atherley's work on Settlements, and Roper's Law of Husband and Wife, edited by Mr. Jacob.

On the Deeds employed in Marriage Settlements.

What necessary on the settlement of the property.

On preparing a Marriage Settlement, the first thing to be done is the examination of the title of the property to be settled, so that all proper parties may be made to join in the deed. The settlement is usually prepared by the intended wife's solicitor, and is afterwards approved of by the husband's. And this seems to be the most proper plan.

Where the property is freehold, all outstanding terms should be assigned to trustees, to attend the uses of the settlement, as if this be not done, the settlor might mortgage the property to a person without notice, and defeat the settlement, to the extent of the mortgage.

If the estate is in a registered county, care must be taken to have the settlement registered, see *M'Neill* v. *Cahill*, 2 Bli. 228.

If the settlement consist of destructible property, clauses for insuring it against fire should be inserted.

The legal estate should always be got in, in settlement transactions. Whenever there are considerable incumbrances on an estate, the settlement should contain a provision for the sale of a part of the estate to discharge them.

Trustees are almost always necessary in marriage settlements, and where they are parties, powers for changing them, and clauses for their indemnity, and the reimbursing their expenses, should always be inserted in the settlement.

All persons having any estate or interest in the property to be settled, should be parties to the deed, and all persons intended to be bound by the deed, as remainder men, &c. should also be made parties; or otherwise they will not be bound. And, although it is usual for the *conveying* parties only to execute the deed, yet trustees and all other parties should also execute it.

It is always proper in marriage settlements, to describe the parties fully, and to give a particular account of their abode and profession or trade; because as settlements are often not acted upon for many years, such description may assist the discovery of trustees and others taking an interest under the deed. The relationship of the parties, is also frequently mentioned immediately after their description. And it was usual at one time, to mention the character in which they acted; but this is at present never done, unless the property is very small, and no recitals are inserted.

Recitals.

All deeds, wills, instruments, and agreements, which serve to show the precise state of the property to be settled, and the estates of the parties at the time of the settlement, and to explain the intentions of the parties, should be recited; but the prior history of the title need rarely be gone into, as in a purchase deed.

If the settlement is made in pursuance of articles, they should be fully recited; and it should be particularly expressed either in the recitals, or in the body of the deed, that the settlement is made in pursuance of them.

Consideration.

The marriage is alone a sufficient consideration for the settlement, where it is executed before marriage, or made in pursuance of articles which were executed before the marriage. And the amount of the lady's fortune, if the consideration of marriage exist, is immaterial.

Parcels.

The property to be settled, should be fully described; but if it is real estate, its description need not be so full as in purchase deeds.

Freeholds.

Where the property is freehold, the mode of settling the property is usually as follows:

Parties.

A release, grounded on a lease, is prepared, to which the intended husband or wife, or whoever is the *settlor* of the property, is of the first part; the other party to the contract, is of the second part; and if the consent of any person or persons is necessary to the mar-

riage, or the parties are under age, their guardians or parents are also made parties to the release, and may be either of separate parts, or be joined in the same part with the person whose marriage they are to authorize. The trustees come next, and their number will vary according to the extent of the property, and the duties prescribed for them by the settlement. Two sets of trustees (each composed of two, and sometime of three persons) are frequently employed; but when the property is considerable, three sets are now more usual.

It should be observed, that the property to be settled, is often vested in more persons than one; in which case, the owner of the first freehold should stand first in the settlement, and the remainder man or reversioner next.

Operative part. The person or persons seised of the property, should there convey it to releasees to uses, usually the first trustees, *habendum* to and for the uses, intents, and purposes, and under and subject to the powers, provisoes, agreements, and declarations thereinafter contained.

Uses. The uses are generally to the settlor and his heirs, or to the old uses until the solemnization of the marriage, and then to the use (*a*) of the second trustees, for the term of ninety-nine years, for the purposes thereinafter mentioned, remainder to the use of the husband for life, remainder to the use of the first trustees during the life of the husband, to preserve contingent remainders, and after the decease of the husband, to the use and intent that the wife may receive a rent-charge for her jointure and in lieu of dower, with powers of distress and entry; or a life estate is sometimes given to the wife, and subject thereto, to the use of the third (*b*) trustees for five hundred years, for the purposes thereinafter mentioned, remainder to the use of the first and other sons of the marriage severally and successively in tail male, remainder to the use of the daughters as tenants in common in tail male, with cross remainders between or amongst them in tail male, remainder to the settlor and his right heirs.

Declarations of trusts of term. The trusts of the term of ninety-nine years are then declared to

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(*a*) The parents or other relatives of the gentleman or lady, frequently take prior estates for life. These limitations, however, have nothing to do with the *settlement.*

(*b*) Two sets of trustees are absolutely necessary; as if the trustees to preserve were also trustees of the term for ninety-nine years, an exercise of the power of entry would merge the term. Three sets of trustees will always be sufficient for any number of terms, if they be limited to the two last sets alternately, in which case, as there will always be an intervening term, no merger can take place.

be, to secure a sum by way of pin money for the wife, during the joint lives of the husband and wife, and subject thereto, in trust for the husband, the term being made to cease on the death of either husband or wife, and the payment of all arrears, which by another proviso are not to be recoverable for more than two years.

The trusts of the term of five hundred years, are then declared to be, in the first place, for securing after the husband's death, the rent-charge of the wife (if it be given to her); and, in the next place, to raise portions for the younger children, and to provide for their maintenance, education, and advancement, and subject thereto, to permit the persons next in remainder to receive the overplus of the rents, the term being made to cease on these trusts being fully performed.

Where the property is at all extensive, powers of leasing for twenty-one years, and for three lives, and for building and repairing, and of selling and exchanging; and where an undivided part of an estate is settled, of partition, should always be introduced. Powers.

Where a manor is settled, a power for enfranchising copyholds should be inserted.

Where mines are settled, and the tenants for life are made impeachable for waste, power to open and work, and also to lease them, should be inserted.

Powers to the settlor and the tenants for life in remainder, where such limitations are inserted, of charging the estates with jointures and portions for future wives and children, should be inserted.

Powers to the husband to charge the estates to a certain amount, and to tenants for life to cut timber, are also usual.

If another estate is expected to devolve on the family, or if one son is to take one estate, and another another estate, shifting clauses providing against the possession of more than one estate to one son, should be inserted. Provisions.

The usual trustee clauses and covenants for title with the trustees to preserve contingent remainders, conclude the deed. Covenants.

This is the ordinary mode of settlement. The term for the purpose of raising the portions of the children, however, is frequently limited before the life estate of the husband.

Copyholds are not susceptible at common law of the usual limitations contained in settlements of freeholds; but if the legal estate is surrendered to a trustee, the equitable interest may be limited in strict settlement, and the other purposes of a settlement effected; but limitations to trustees to preserve are unnecessary, as all the subsequent estates will be equitable; and in this way powers for sales, exchanges, and leases may be exercised. But the settlement should not be permitted to rest on a mere covenant to surrender; an actual Copyholds.

surrender should always be made after the marriage, and a minute should be made that the trustees were admitted to the estate, upon the trusts of the settlement; or, if possible, the trusts themselves should be entered on the rolls, as this would effectually prevent any improper alienation by the trustees. See *post, Settlement of Copyholds.*

If copyholds are intended to be settled in the same deed as freeholds, they may be surrendered to trustees, and the trusts may be declared by reference to the freeholds, if they are intended to go in the same way.

In the power to lease, a proviso should be inserted, that no lease shall be made without a license from the lord or his steward.

Leaseholds for lives.

Leasehold for lives may be settled in the same way as freeholds, and they may be limited by reference to the limitations of freeholds. All the powers mentioned as applicable to settlements of freeholds, are also applicable to settlements of leaseholds for lives; and if the leaseholds are renewable, the additional power for renewal should be inserted, which should always be given to the trustees, as this will prevent an alienation by the settlor, who might defeat the settlement if the lease was renewed by himself.

When they are settled in the same deed with freeholds, they should be vested in trustees upon such uses and trusts as will nearest correspond with the uses declared of the freeholds.

Leaseholds for years.

Settlements of leaseholds for years resemble chiefly settlements of other personal property; but powers of leasing, insuring, and if the leaseholds are renewable, of renewal out of the rents, should be given to the trustees.

Where leaseholds for years are settled in the same deed as freeholds, they should be vested in trustees, upon such trusts as will nearest correspond with the uses declared of the freeholds.

Realty and personalty.

If real and personal property are settled in the same deed, separate sets of limitations are sometimes advisable; trusts by reference are perhaps more usual.

Plate, &c.

If plate, furniture, or other personalty, is directed to be enjoyed by the several persons who shall from time to time be entitled to the use of the mansion house, &c. as in the nature of heir looms, or so long as the rules of law and equity will permit, it will vest absolutely in the first tenant in tail, who comes in *esse*. *Foley* v. *Burnell*, 1 B. C. C. 274; *Carr* v. *Lord Erroll*, 14 Ves. 478; but his power of transmission may be deferred till he attain twenty-one. *Vaughan* v. *Burslem*, 3 Bro. C. C. 101.

Stock.

Stock will not pass by an assignment by deed at law; an actual transfer must be made into the names of the trustees in the bank books. This is usually done before the execution of the settlement, and is recited in it. But an assignment of stock will operate in equity, and where the bank books are shut, this mode is sometimes adopted.

Separate use of married women.

If the property is to be settled to the separate use of the wife, if real estate, it should be conveyed, and if personalty, assigned, to a trustee,

in trust until the marriage, for the wife, and after the marriage, in trust during the joint lives of the husband and wife, to pay the rents and profits or interest and dividends, according to the nature of the property, to such person as she should by writing, but not by way of anticipation, appoint; and in default of appointment, into her own hands for her separate use, her receipt, or that of her appointees, to be a sufficient discharge; and if her husband should die in her life time, in trust for her and her heirs or executors and administrators, according to the nature of the property; but if she should die in his lifetime, then upon such trusts as she shall by will appoint; and in default of appointment, [in trust for the children of the marriage, and if no children] in trust for her heirs or nearest of kin. By these limitations it has been generally thought the husband will be totally excluded from the property, unless the wife should make a will in his favour.

It has been seen, however, that the late case of *Barton* v. *Briscoe*, *ante*, 339, has rendered the effect of the above trusts questionable, as if the wife could procure the assent of the children, she might appoint the fund to her husband in her life time. This may perhaps be obviated, if it is wished, by declaring the trust in default of appointment to be in favour of the next of kin, or any other person whose assent it would be impossible to obtain.

Numerous other practical observations will be found in the succeeding pages; but the student is recommended attentively to consider the forms contained in them, as they will afford him a much better guide as to the correct mode of framing settlements, than any mere written directions can possibly do.

The following are the provisions of the stamp act relating to settlements.

Stamps on settlements.

"Any deed or instrument, whether voluntary or gratuitous, or upon any good or valuable consideration, other than a *bonâ fide* pecuniary consideration, whereby any definite and certain principal sum or sums of money (whether charged or chargeable on lands or other hereditaments, or heritable subjects or not, and if charged or chargeable on lands, or other hereditaments or heritable subjects, whether to be raised at all events or not) or any definite and certain share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the governor and company of the Bank of England, or of the East India Company, or of the South Sea Company, shall be settled or agreed to be settled, upon or for the benefit of any person or persons, either in possession or reversion, either absolutely or conditionally, or contingently, or for life, or other partial interest, or in any other manner whatsoever;

If such sum or sums of money, or the value of such share or shares, in all or any of the said stocks or funds, or both, shall not amount to 1000*l.*, - - - - - - - - - £1 5 0

Amounting to	£1,000	and not to	£2,000	-	-	-	2	0	0
	2,000	-	-	3,000	-	-	-	3	0	0
	3,000	-	-	4,000	-	-	-	4	0	0
	4,000	-	-	5,000	-	-	-	5	0	0
	5,000	-	-	7,000	-	-	-	7	0	0
	7,000	-	-	9,000	-	-	-	9	0	0
	9,000	-	-	12,000	-	-	-	12	0	0
	12,000	-	-	15,000	-	-	-	15	0	0
	15,000	-	-	20,000	-	-	-	20	0	0
	20,000, or upwards				-	-	-	25	0	0

And where any such deed or instrument as last mentioned, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein over and above the first 1080 words, a further *progressive* duty of - - - £1 5 0

And for any duplicate of any such deed or instrument as last mentioned, [*The same duty or duties.*]

Exemptions.

Exemptions from the preceding *ad valorem* duties on settlements. Bonds, mortgages, and other securities operating as settlements, if chargeable with the *ad valorem* duties on bonds and mortgages hereinbefore granted.

Deeds or instruments of appointment, in execution of powers given by any previous settlement, deed, or will, to or in favour of persons specially named or described as the objects of such powers.

Deeds or instruments merely declaring the trusts of money or stock, pursuant to any previous settlement, deed or will, or for securing any gifts or dispositions made by any previous settlement, deed, or will.

Wills, testaments, and testamentary instruments and dispositions, *mortis causâ*, of every description.

As to what settlement will be deemed a family arrangement, and not liable to *ad valorem* duty, see *Doe dem. Manifold* v. *Diamond*, 4 B. and C. 243; 6 Dow. & Ry. 328, stated *ante*, 28.

MARRIAGE ARTICLES. SIMPLE FORM, WITH VARIATIONS.

MARRIAGE ARTICLES *of* FREEHOLDS, *where the Property is the Gentleman's, who is* TENANT IN FEE SIMPLE *or* FEE TAIL; *Recital that a Settlement cannot be made immediately; with* VARIATIONS *for the Circumstances of the Property being the Lady's; the Consent of a Parent or Guardian being necessary to the Marriage; or the Articles being made in Consideration of a mutual Settlement.*

THIS INDENTURE, made the day of BETWEEN [*gentleman*] (*a*), of &c. of the first part; [*lady*] of &c. of the second part; and [*trustee*] of &c. of the third part. WHEREAS (*b*) the said [*gentleman*] (*c*) is, under or by virtue of the last will and testament of [T. D.] late of &c. Esquire, deceased, seised of or well entitled, as tenant in fee tail (*d*) in possession, to the manors, messuages

Parties.

Recital that gentleman is seised, as tenant in fee-tail, of the premises.

(*a*) If the lady's property is the subject of the articles, she will be of the first part, and the gentleman of the second; or if the assent of a parent or guardian is necessary, he should be of the second part; and see *post*, 373.

Lady's property.

Guardian, &c.

(*b*) The history of the title may be fully recited, and where the property is large, this course is to be recommended; see all the usual recitals, *ante*, PURCHASE DEEDS; and *post*, in the succeeding forms

Recitals.

(*c*) If the lady's property is to be settled, it will be "the said [*lady*] is," &c. *and thus throughout.*

Lady's property.

(*d*) Or, "fee simple" according to the circumstances of the case.

Fee simple.

If leaseholds are also agreed to be settled, say,

Leasehold.

"AND WHEREAS the said [*gentleman*] or [*lady*] is also possessed of, or entitled unto the leasehold messuages or dwelling-houses and premises, hereinafter described, with the appurtenances."

The student is here reminded, that personal estate may be settled *at once*, although it is the property of an infant. See *ante*, 326. It is therefore, very rarely the subject of articles, unless it be in expectancy. See *post*, 369.

MARRIAGE ARTICLES.

Agreement for marriage.

Agreement to settle premises.

Agreement to enter into articles until settlement can be made.

Testatum, whereby gentleman and lady covenant to do all necessary acts, to

or tenements and hereditaments hereinafter described, with their rights, members, and appurtenances: AND WHEREAS a marriage hath been agreed upon, and is shortly intended to be had and solemnised, between the said [*gentleman*] and the said [*lady*] (*e*): AND WHEREAS on the treaty for the said marriage it was agreed that the said manors, messuages or tenements and hereditaments hereinafter described, with their rights, members, and appurtenances, should be settled to the uses and in the manner hereinafter mentioned: AND WHEREAS (*f*) considerable delay would attend the preparation and execution of a final and complete settlement, and it hath therefore been agreed that the said [*gentleman*] should enter into the agreements hereinafter contained (*g*). NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage (*h*), HE the said [*gentleman*] doth hereby for himself, his heirs, executors, and administrators, *And* the said

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Assent of guardian.

(*e*) If a parent or guardian's assent is necessary to the marriage, add,

"with the privity and approbation of the said [*parent or guardian*], testified by his [*or* her] being a party to and sealing and delivering these presents."

Articles by infant invalid.

(*f*) It has been seen, that no agreement as to the real estate of infants, will be valid, whether male or female, see *ante*, 327. But the state of the property may be embarrassed; there may be terms to assign, legal estates to get in, and proper parties to discover, or the parties may be too impatient to wait for a complete settlement. In all these cases, articles will be necessary.

Mutual settlement.

(*g*) If the articles are made in consideration of a mutual settlement, recitals of the deeds or agreements for effecting it, should here be introduced; and see *post*, p. 375.

Mutual settlement.

(*h*) Or, if the articles are made in consideration of a mutual settlement say,

"*And* in consideration of the settlement made by the said hereinbefore recited indenture of lease and release,"

or as the case may be.

Future property of lady.

If the articles are made in consideration of the present and future personal property of the lady, say,

"*And* in consideration of all the personal property, rights, credits, and expectancies of the said [*lady*], to which she the said [*lady*] now is, or may hereafter, during the said intended marriage, be, or become possessed of, or entitled unto, or interested in."

[*lady*] doth hereby for herself, her executors and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, that if the said intended marriage shall take effect, *They*, the said [*gentleman*] and [*lady*], according to their several and respective estates, rights, and interests, in the hereditaments hereinafter mentioned, shall and will, within (*i*) months from the date of these presents, or as soon after as conveniently may be, at the costs and charges of the said [*gentleman*], by one or more fines or common recoveries, and such other good and sufficient conveyances, surrenders, and assurances in the law, and in such manner as the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, shall require, advise, or direct, convey, surrender, settle, and assure ALL THAT, &c. (*describe the parcels*), with their and every of their rights, members, and appurtenances, and the inheritance thereof, respectively discharged (*k*) of and from all estates tail, and remainders, limitations over, and reversions thereupon expectant or depending; and of and from all charges and incumbrances whatsoever, (except the leases for the time being) so and in such manner as that the manors, messuages or tenements, hereditaments and premises, shall and may thenceforth go, remain, and be, *To the several uses*, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter expressed and contained, of and concerning the same, (that is to say), *To the use* and intent, that the trustees to be named by the said [*lady*], their heirs and assigns, may, during the joint lives of her and the said [*gentleman*], receive an annual rent of pounds of lawful money of Great Britain and Ireland, to be issuing out of the said hereditaments, and to be payable by quarterly payments, with usual powers of distress and entry, and perception of rents, issues, and profits; in trust to

MARRIAGE ARTICLES.

convey and settle the premises, discharged of all estates tail,

to the uses following (that is to say)

to the use that lady may receive a rent-charge, by way of pin money;

(*i*) A certain time in cases of this nature, should always be mentioned, and if possible, be adhered to. Certain time.

(*k*) Where the gentleman (or lady) is tenant in fee simple, the reference to the estate tail and remainders over, should be omitted. Fee-simple.

MARRIAGE ARTICLES.

pay the said annual rent of pounds, for the sole and separate use of the said [*lady*], independently of the said [*gentleman*], in the nature of pin-money, (and subject thereto), *To the use* of trustees, to be named by the said [*lady*], for ninety-nine years, upon the usual trusts for raising the said annual rent of pounds: *And* (subject thereto) *To the use* of the said [*gentleman*] and his assigns for his life, without impeachment of or for any manner of waste; with remainder, *To the use* of the said [*trustees*], and their heirs, during the life of the said [*gentleman*], in trust for him, and by the usual ways and means to preserve the contingent remainders; *And* after the decease of the said [*gentleman*], *To the use* and intent that the said [*lady*] and her assigns, if she shall then be living, may receive and take, during her life, an annual sum, or yearly rent-charge of pounds, of lawful money of Great Britain and Ireland, clear of all deductions whatsoever, and to be issuing out of the said manors, messuages or tenements, hereditaments, and premises, hereinbefore described, with their appurtenances, and to be paid by four equal quarterly payments: *And* in the said settlement it shall be declared that such annual sum, or yearly rent-charge, shall be in full of the jointure of the said [*lady*], and in bar of all her dower, and thirds and customary rights; *And* in the said settlement shall be contained the usual powers of entry and distress upon the said manors, messuages or tenements, hereditaments, and premises, for recovering the said annual sum, or yearly rent-charge of pounds, if the same, or any part thereof, shall be in arrear; *And* subject thereto, *To the use* of other trustees to be named in the said settlement, their executors, administrators, and assigns, for the term of one thousand years, to commence from the decease of the said [*gentleman*], upon and for the several trusts, intents, and purposes, to be herein and thereinafter declared; *And* after the expiration, or sooner determination of the said term, and in the meantime subject thereto, *To the use* of the first and every other son of the said [*gentleman*], by the said [*lady*], severally and successively, according to their

and, subject thereto, to the use of gentleman for life, remainder to trustees to preserve;

remainder to the use that lady may receive rent-charge in bar of dower, with usual powers;

and, subject thereto, to the use of trustees for a term of 1000 years;

remainder to first and other sons in tail male;

MARRIAGE ARTICLES.

respective seniorities, in tail male; *And* in default of such issue, *To the use* of all and every the daughters of the said [*gentleman*] by the said [*lady*], to be divided between them, as tenants in common in tail, with cross remainders between or among them in tail; and if all the said daughters should die without issue, save one, or if there shall be but one daughter, *To the use* of that one, and in default of such issue, *To the use* of the first and every other son of the said [*gentleman*] by the said [*lady*] severally and successively, according to their respective seniorities in tail general; and in default of such issue, *To the use* of the said [*gentleman*] (*l*), his heirs and assigns for ever; *And* in the said settlement, the said term of one thousand years shall be declared to be limited to the said trustees, so to be named as aforesaid, *Upon trust*, in the first place, for better securing to the said [*lady*] and her assigns, the said yearly rent-charge or sum of pounds for her life, in case she shall survive the said [*gentleman*]; *And* in the next place, *Upon trust*, by sale, mortgage, or other disposition of the premises to be comprised in the said term, to raise the sum of pounds for the portion or portions of the daughters and younger sons of the said intended marriage, and to pay the same to them at such times, and in such shares and proportions, and in such manner, and with such provisions for their maintenance, education, and advancement, as the said [*gentleman*] should by deed or will appoint; and in default of such appointment, to pay the same to such children of the said intended marriage, as being a younger son or sons, should attain the age of twenty-one years, or being a daughter or daughters, should attain that age, or marry; *And* that in the settlement hereby covenanted to be made as aforesaid, powers shall be given to the said [*gentleman*], during his life, and after his decease, to the

remainder to daughters, as tenants in common in tail;

remainder to sons in tail general;

remainder to gentleman in fee;

That trusts of the term of 1000 years shall be declared in the settlement to secure jointure and portions.

and that in the settlement, powers shall be given to the

(*l*) The uses to which this property is to be settled, must of course depend upon the circumstances of the case. The forms of settlements given in the succeeding pages, will be the best guide.

Uses.

If the property be the lady's, the ultimate limitation will be to her heirs; or a power of appointment may be given to her, and in default thereof, to her heirs; see the proper form, *post*, p. 384.

Lady's property.

MARRIAGE ARTICLES.

gentleman and lady, and releasees to uses in settlement, to lease for 21 years;

said [*lady*], during the life of the said [*lady*]; and after the decease of such [*gentleman*] and [*lady*], to the persons who shall be releasees to uses in the settlement, and the survivor of them, and the executors or administrators of such survivor, during the minority, or respective minorities, of any such child or children, as shall by virtue of the limitations to be contained in the said settlement, be for the time being entitled to the freehold and inheritance of the said manors, and other hereditaments comprised therein, to limit or appoint the same, or any part or parts thereof, by way of lease, for any term of years not exceeding twenty-one years in possession, at

and to grant building leases;

rack rent, and under the usual restrictions; and also to grant building leases for such number of years, upon such terms, and in such manner, as they or he shall

and powers to the releasees in settlement to enfranchise copyholds;

think proper; *And* powers to enable the same persons, who are releasees to uses in the said intended settlement, and the survivor of them, and the executors and administrators of such survivor, at the request in writing of the said [*gentleman*] and [*lady*], and the survivor of them, to enfranchise any copyhold estate, holden of the manors

to make partition;

hereinbefore covenanted to be settled, and to make partition or division of any part or parts of the hereditaments

and of sale and exchange;

hereby covenanted to be settled as aforesaid; and also to limit and appoint any part or parts of the same hereditaments, to any person or persons whomsoever, by way of sale, or in exchange for other hereditaments, situate in

and for any of these purposes to revoke the uses in the settlement, and appoint others;

England; *And* for the purpose of making and effectuating any such enfranchisement, partition, or division, sale or exchange, to revoke the uses to be limited in the said intended settlement, and to appoint such other uses as the said trustees, or the survivor of them, or the executors or administrators of such survivor, shall think

and power to give receipts;

proper, with usual clauses for enabling the said trustees, or the survivor of them, or the executors or administrators of such survivor, to give receipts or discharges to any persons purchasing any part of the said hereditaments, or paying money for equality of partition, or exchange, or for the enfranchisement of the said copyhold hereditaments, or any other monies, which may be payable to such trustees, under the trusts of the settlement; *And* with directions to the same trustees, and

MARRIAGE ARTICLES.

the survivors and survivor of them, and the executors or administrators of such survivor, to lay out the money received by them or him in any such partition, or sale, or exchange, or for enfranchisement, in the purchase of other estates in England, and to settle the estates so to be purchased, or which shall be received by way of partition, or exchange, or for any enfranchisement as aforesaid, to the subsisting uses of the settlement so to be made as aforesaid, and till a purchase can be found, to lay out the money received by them or him, in their or his names or name, upon government or real securities in England, with power to vary the same securities, as occasion may require, and with direction to pay the interest, dividends, and annual produce thereof, to the persons for the time being entitled to the produce of the settled estate remaining unsold; (*n*) and (*o*) in the conveyances and settlements and that all other usual and

with directions to lay out the monies in the purchase of other lands;

or, in the mean time, in the funds.

(*n*) The powers above referred to, are those most usually inserted in settlements. If powers for jointuring and portioning are intended to be inserted, they may be shortly referred to as follows:

Other powers.

"*And* also powers for enabling the respective tenants for

(*o*) If leaseholds are also to be settled to the same uses, say,

Part leaseholds.

"*And* it is hereby further agreed and declared between and by the parties hereto, that the said [*gentleman*] and [*lady*] will do and make all necessary acts, things, assignments, and assurances for assigning and assuring the said leasehold messuages or tenements and premises, with the appurtenances, to the said [*trustees*] for the remainder of the term or terms of years for which the same shall respectively be held by the said [*gentleman*] or [*lady*], upon and for such and the same trusts, intents, and purposes, and under and subject to the same powers, provisions, and declarations, as are hereinbefore expressed and declared of and concerning the freehold hereditaments and premises hereinbefore covenanted to be settled, or as near thereto as the nature of the respective estates and the rules of law and equity will permit, but that no person, who shall be entitled to an estate tail in such freehold hereditaments and premises, shall have an absolute interest over the said leaseholds, until he or she shall attain the age of twenty-one years."

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proper clauses shall be inserted in settlement.

hereby covenanted to be made as aforesaid, there shall be inserted provisions for the appointment of new trustees, and for the indemnity of the trustees; *And* such further and other clauses, powers, provisions, and declarations, for the further and better explaining and ascertaining, or effectuating the intent, meaning, and ob-

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life, when in possession, to jointure any wife with whom they may intermarry, in any sum, not exceeding the sum of pounds per annum for each jointure, and so that the said hereditaments and premises, hereby covenanted to be settled, be not charged with more than two jointures at the same time; *And* also to charge the same hereditaments and premises with portions for younger children to any amount, not exceeding the sum of pounds."

Small property. Where the property is small, the particular mention of the powers and provisions to be inserted in the settlement may be omitted, and the following general clause inserted:

"*And* it is hereby agreed and declared, that in the settlement so to be made as aforesaid, there shall be contained the usual powers and provisions, for the maintenance, education, and advancement of the children of the said intended marriage, and for leasing, selling, exchanging, and enfranchising the hereditaments and premises hereby agreed to be settled, and for the change and indemnity of the trustees of the said settlement, and for making their receipts sufficient discharges; and all other proper and usual clauses necessary for carrying the intentions of the parties hereto into complete effect."

And under a clause directing all usual powers and provisions, powers of sale and exchange will be directed to be inserted in the settlement; *Peake* v. *Penlington*, 2 Ves. & Bea. 311; *Williams* v. *Carter*, cited in Sug. Pow. 142, 4th edit.; but they will not be inserted in a settlement directed in a will, unless they are expressly directed. *Wheate* v. *Hall*, 17 Ves. jun. 80; *Brewster* v. *Angell*, 1 Jac. & Walk. 625. If a power of partition is intended to be given to the trustees, it should always be mentioned, as a power of sale will not authorize a partition, and it is doubtful whether a power to exchange will. *M'Queen* v. *Farquhar*, 11 Ves. jun. 467; *Attorney General* v. *Hamilton*, 1 Madd. 214; *Abel* v. *Heathcote*, 4 B. C. C. 278; 2 Ves. jun. 98; Sug. Pow. 476, 4th edit.

ject of the parties thereto (but not inconsistent with the general scope of these presents), as by the said [*trustees*], or the survivor of them, shall be reasonably advised, devised, and required. IN WITNESS, &c. (*p*)

MARRIAGE ARTICLES.

WITNESSING PART *in* MARRIAGE ARTICLES, *whereby* COPYHOLDS *are covenanted to be surrendered, upon the same Trusts as have been declared of* FREEHOLDS.

COVENANT TO SURRENDER COPYHOLDS.

AND WHEREAS upon the treaty for the said intended marriage, *It was* (amongst other things) agreed, that the said copyhold, or customary cottage, lands, and hereditaments, hereinafter described, should be settled in the manner hereinafter mentioned. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said last mentioned agreement, and in consideration of the said intended marriage, *They* the said [*gentleman*] and [*lady*], *Do* hereby jointly for themselves, their heirs, executors, and administrators, and each of them, *Doth* hereby for himself and herself, and his and her heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, that if the said intended marriage shall take effect, *They* the said [*gentleman*] and [*lady*], or one of them, shall and will, with all convenient speed, after the solemnization thereof, at the

Agreement that copyholds should be settled in the manner hereinafter mentioned.

Testatum, whereby gentleman and lady covenant that they will, after the solemnization of the marriage,

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(*p*) For other limitations and clauses which may be inserted in articles, see *post, Settlements of after-acquired Property and Expectancies.*

COVENANT TO SURRENDER COPYHOLDS.

costs and charges of the said [*gentleman*], his heirs, executors, and administrators, well and effectually, to the approbation of the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, surrender, or cause to be surrendered, into the hands of the lord or lady of the manor of , in the said county of, &c. ALL THAT cottage or dwelling-house, part whereof is now in the occupation of one [T. H.]: *And all those* barns, bartons, waggon-house, and thirty acres of arable and meadow land (be the same more or less) thereunto belonging, now and for many years past in the occupation of [J. R.], *All* which said premises are situate, lying, and being at , in the said county, and are called or known by the names of , and late with the appurtenances, *To* the use of the said [*trustees*], their heirs and assigns: *To be* held of the lord or lady of the said manor of , according to the custom of the said manor, by the rents and services therefore due and of right accustomed; *But* nevertheless, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, as, regard being had to the difference in the nature of the estates, will best or nearest correspond with the uses, trusts, intents, purposes, powers, provisoes, agreements, and declarations, hereinbefore expressed and declared of and concerning the said freehold messuages or tenements, lands, hereditaments, and premises hereinbefore covenanted to be conveyed as aforesaid, and their appurtenances.

surrender the copyholds,

to the use of trustees,

upon the same trusts as are before declared of the freeholds.

MARRIAGE ARTICLES *of* PERSONALTY *in* EXPECTANCY, (*being the last witnessing Part of Articles, whereby other Property is agreed to be settled*); *Covenants to vest it in* TRUSTEES *upon trust for the separate use of Lady, and the Children of the Marriage, or as she shall appoint;* GENERAL CLAUSE *applicable to all Articles of Personalty.* OF PERSONALTY IN EXPECTANCY.

AND THIS INDENTURE FURTHER WITNESSETH, That in pursuance and further performance of the said agreement, and for the considerations hereinbefore mentioned, the said [*gentleman*] and [*lady*], his intended wife, *Do* hereby jointly, for themselves, their heirs, executors, and administrators, and each of them, *Doth* hereby separately, for himself and herself, and his and her heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors and administrators; that if at any time after the solemnization of the said intended marriage, and during the life of the said [*lady*], any monies, or other personal estate, shall be given or bequeathed, or come to, or devolve upon the said [*lady*], or the said [*gentleman*] in her right; *Then* and so often as the same shall happen, the said [*lady*] and [*gentleman*] respectively, and their respective executors and administrators, shall and will, at the expense of the said [*lady*], her executors or administrators, make, do, and execute, or cause and procure to be made, done, and executed, all such acts, deeds, assignments, and assurances in the law whatsoever, as the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, or their or his counsel in the law, shall think necessary and proper, for effectually vesting such monies and other personal estate in the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, and assigns of such survivor, *Upon* the trusts and in the manner following,

Testatum, whereby gentleman and lady covenant with trustees, that if any personal estate shall devolve upon the lady, they will do all necessary acts for vesting such personal estate in trustees, upon the trusts following:

OF PERSONALTY IN EXPECTANCY.

or as near thereto as the circumstances of the case will admit of, (that is to say); *In trust* for the separate use of the said [*lady*], during the joint lives of her and the said [*gentleman*], without being subject to the debts or interference of the said [*gentleman*]; *And* after the decease of the said [*gentleman*], *In trust* for the said [*lady*], and her assigns, during her life; and after the decease of the said [*lady*], *In trust* for all and every, or such one or more, exclusively of the other or others of the children or child of the said [*lady*] by the said [*gentleman*], her said intended husband, with such provisions for their respective maintenance, education, and advancement, at such time or times; and if more than one, in such shares, and upon such terms, and in such manner, for the benefit of the said children, or some or one of them, as the said [*lady*], whether covert or sole, shall by deed or will appoint; *And* in default of such appointment, *In trust* for all and every the children and child of the said [*lady*] by the said [*gentleman*], her intended husband, who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age, or marry under that age with the consent of her or their parent or parents, or guardian or guardians for the time being, to be divided between or among the said children (if more than one), in equal shares; and if there should be but one such child, *Then in trust* for that one child; and if there should be no child, to become so entitled as aforesaid to the said monies or other personal estate; *Then* after the decease of such [*lady*], and failure of issue, as aforesaid, *In trust* for her executors and administrators, for their own absolute use and benefit. *And it is hereby agreed and declared,* That in every settlement to be made of any such monies and other personal estate as aforesaid, shall be inserted such provisions for the maintenance, education, and advancement of the children, and such provisions for changing the securities, and for laying out the trust monies in the purchase of real estate, and for making such real estate of the nature of personalty, and for the appointment of new trustees, and for the indemnity of the trustees,

In trust for the separate use of lady, during joint lives of her and gentleman;

and after her decease, In trust for such children of lady by gentleman as lady should appoint;

and in default thereof, In trust for all the children, who, being a son, shall attain 21, or being a daughter, shall attain that age or marry;

and if there should be no children, In trust for the executors of lady.

Agreement that provisions for the maintenance, education, and advancement, and all other provisions proper for settlement of personal estate, shall be inserted in settlement.

and such further and other powers and provisions for better explaining and effecting the objects of the said parties (not inconsistent with the general scope of these presents), as by the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel, shall be reasonably advised, devised, and required. (*a*) IN WITNESS, &c.

OF PERSONALTY IN EXPECTANCY.

(*a*) For other clauses of a similar nature, see *post, Settlement of Expectancies.*

MARRIAGE ARTICLES, WHERE THE LADY IS A WARD OF COURT.

MARRIAGE ARTICLES, *where the Lady is a* (*a*) WARD *of the* COURT OF CHANCERY, *and a* MINOR (*b*); *Recitals of the Gentleman's Proposals to the* MASTER, *and their Acceptance: Covenants to Settle the Property, as to Part to* LADY'S MOTHER *for Life, and after her Death, as to that Part, and as to all the Residue, on Lady's attaining Twenty-one, to Uses in favour of* LADY *and* GENTLEMAN, *and the* CHILDREN *of the Marriage, the ultimate Remainder to such Uses as Lady should appoint, and in Default of Appointment, to Lady in Fee. References to all Usual and some Special* POWERS *to be contained in the* SETTLEMENT. PROVISO *that if Lady should die under Twenty-one, Gentleman shall nevertheless be Tenant by the* CURTESY. *Covenant by Gentleman to do all Acts for effectuating the Settlement.* PROPOSALS *of Gentleman in Note.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. of the first part; [*mother*

Wards of court, settlements by.

(*a*) If a person marry a ward of court without obtaining permission, he is not only guilty of contempt to the court, but a settlement of the ward's property will be directed, of the strictest nature, as respects the husband. *Like* v. *Beresford*, 3 Ves. 406. And the husband will be kept in confinement until it is made. *Stevens* v. *Savage*, 1 Ves. jun. 154. And where a man has married a ward merely for her property, he will be permitted to have no part of it. *Bull* v. *Coutts*, 1 Ves. & Bea. 303. *Like* v. *Beresford*, *ubi sup.* and the consent of the ward to a settlement on the husband will not alter the case. *Stackpoole* v. *Beaumont*, 3 Ves. 89, 98. Neither will the consent of her father alter the case. *Barrington* v. *Grogan*, 1 Beatt. Ir. Rep. 215. And although a ward should leave her husband and live in adultery, she will be nevertheless entitled to a provision out of such *choses in action* as her husband must come into a court of equity to claim, which as we have seen,

Articles by a minor, a ward of court.

(*b*) The above precedent was drawn and settled by three very eminent living conveyancers. It might perhaps have been thought, that the

of lady], (formerly the wife, but now the widow of [T. H.] late of, &c. deceased, and guardian of the person and estate of [*lady*] of, &c. spinster, a minor of the age of nineteen years, or thereabouts, the daughter and only surviving child of the before mentioned [*mother of lady*] by the said [T. H.], her late husband,) of the second part; the said [*lady*], of the third part; [W. P.] of, &c. of the fourth part; and [*trustees*] of, &c. of the fifth part. WHEREAS some time since a marriage was agreed on

MARRIAGE ARTICLES, WHERE THE LADY IS A WARD OF COURT.

Recital of agreement for

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seen *ante*, p. 347, another wife living in adultery will not be entitled to. *Ball* v. *Coutts*, *ubi sub.*

And so long as the property remains in court, the jurisdiction of the court to make a settlement remains, although the ward marries after the age of 21 years. *Austen* v. *Hasley*, 1 Sim. & Stu. 123. And see *Stackpole* v. *Beaumont*, 3 Ves. 98.

And when the fortune of a ward, being married, has been taken out of court, on an affidavit that she was an adult, it was ordered on a summary application by petition, to be replaced by the person who made the affidavit, and also by the solicitor concerned in the application, who had in his possession proceedings which shewed the infancy; as he might have guarded the court against the surprise. *Barrington* v. *Grogan*, 1 Beatt. Ir. Rep. 199.

But although a ward marries with consent of the court, the husband must nevertheless make a settlement for the benefit of the ward and her issue; *Halsey* v. *Halsey*, 9 Ves. 471. *Smith* v. *Smith*, 3 Atk. 305; *Barrington* v. *Grogan*, 1 Beatt. 215; but where he makes a settlement out of his own property, the whole of the ward's property is generally not settled, but a part is given to the husband. See *Pearce* v. *Crutchfield*, 16 Ves. 48.

Settlements by a ward of court, although made after marriage, are not voluntary, but are good against purchasers and creditors. *Like* v. *Beresford*, 3 Ves. 506.

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the circumstance of the infant being a ward of court, rendered a settlement of her real estate valid; a settlement, or articles for a settlement being, as has before been seen, in other cases, invalid. Where the legal estate is in trustees, it might perhaps make some difference, although this conjecture is ventured with great diffidence; but where the infant is herself entitled to the legal estate, it would seem clear that articles professing to settle it, must be subject to the usual rule, and that the circumstance of the articles being approved of by the Court of Chancery would not render them valid.

MARRIAGE ARTICLES, WHERE THE LADY IS A WARD OF COURT.

between the said [*gentleman*] and [*lady*], with the consent and approbation of the said [*mother of lady*]: And whereas by an order of the High Court of Chancery, bearing date the day of , and made in a cause wherein the said [*lady*] by [J. C.] her next friend, was complainant, and the said [*mother of lady*] and others, were defendants, It was, upon the petition of the said [*gentleman*], ordered that it should be referred to [F. C.], Esq. one of the masters of the said court, to consider and certify whether the proposed marriage between the said [*gentleman*] and [*lady*], would be a proper marriage and fit to be carried into execution; *And* if the said master should be of opinion that it was a proper marriage and fit to be carried into execution, that then the said [*gentleman*] should be at liberty to lay proposals before the said master, for the proper settlement to be made on such marriage; *And* the said master was to state the same, with his opinion thereon, to the said court: And whereas in pursuance of the said order, the said master made his report, bearing date the day of , and thereby certified, That, &c. (*state the report verbatim, approving of the marriage, and shewing what property* (*c*) *the lady has, and how she became entitled thereto, and stating the proposals* (*d*) *of the gentleman to make the settlement, and the approval of them by the*

marriage, with consent of mother.

Order in Chancery, whereby it was referred to the master to consider the propriety of the match;

and that if the master thought it was proper, the gentleman should make proposals, and master should report thereon.

Master's report.

State of the property.

(*c*) The property, in this case, was devised, as to part to the mother of the lady for life, and as to all the rest, and as to that part after the the death of the mother, to the lady in fee.

Proposals for the settlement of the property of the lady.

(*d*) The following form of proposals made before the master for the settlement of the lady's property, may be found useful:

Statement of the property of the lady.

"The proposal of the defendant [Y. Z.] for and on behalf of the said plaintiff [A. B.], for a settlement of the fortune of the said plaintiff.

"The plaintiff is entitled intail male in remainder expectant on the decease of her uncle, the said [B. B.], and the failure of his sons and daughters, and their issue male, to the following estates.

"1st. Under the will of her grandfather [R. B.], deceased, to a freehold estate at , in the county of , an eighth turn or right of presentation to the church of , a freehold farm and lands, at ;

"2d. Under the first codicil to the will of her grandfather, the said

master): AND WHEREAS by an order of the said Court of Chancery, bearing date the day of , the said report of the said master was absolutely confirmed; *And* it was also ordered, that a settlement of the said manor or lordship, messuages or tenements, lands, hereditaments, and premises, with the appurtenances, should be accordingly prepared: AND WHEREAS in obedience to the said order, and in pursuance of the said proposals on the part of the said [*gentleman*], by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with and executed before

MARRIAGE ARTICLES, WHERE THE LADY IS A WARD OF COURT.

Confirmation of the master's report.

That gentleman's estate has been conveyed, pursuant to the order and report, by indentures of lease and release of even date.

[R. B.], to the manor of , in the county of , and the freehold and copyhold estates belonging thereto; and,

"3d. Under the second codicil to the will of her grandfather, the said [R. B.], is entitled to the freehold manor and advowson of .

"The plaintiff is under the will of her grandfather, the said [R. B.], entitled in tail male in possession, to a copyhold estate at , in the county of ; and under the same will, she is absolutely entitled to a leasehold estate at .

"N. B. This leasehold is vested in the said defendant [Y. Z.], as the surviving trustee of the will, and held under the dean and chapter of , by two several leases of twenty-one years, renewable every seven years, one lease dated the day of , the other the day of .

"The plaintiff [A.B.] is under the settlement executed soon after the marriage of her father [T. B.], deceased, entitled in tail in possession, with the reversion in fee expectant thereon, to an undivided moiety of the tithes issuing out of the same estate, and an undivided eighth part of the tithes issuing out of lands in the parishes of , and a freehold estate, consisting of acres, at , in the county of , called .

"The plaintiff [A. B.] under the will of her father, is absolutely entitled to his books, pictures, plate, and furniture, and will, on attaining twenty-one, become absolutely entitled in possession, to the following property (that is to say); to a moiety of and lands at , held by two leases under the dean and chapter of , for two several terms of twenty-one years, renewable every seven years; to one-sixteenth of colliery, in the county of , held by lease for twenty-one years, under the dean and chapter of , with the like part of the colliery materials; and to one-sixteenth of colliery, &c.; to one-eighth of the fitting or vending of

MARRIAGE ARTICLES, WHERE THE LADY IS A WARD OF COURT.

these presents, and made, or expressed to be made, between, &c. &c. The said [W. P.] hath conveyed certain messuages or tenements, situate in the county of [C.], of the annual value of one thousand pounds and upwards, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, to which the same were by the said hereinbefore recited proposals of the said [*gentleman*], proposed to be covenanted and settled: AND WHEREAS in obedience to the said order, it hath been agreed that the said manor or lordship, messuages or tenements, lands, hereditaments, and premises, should be

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collieries; and to about pounds three per cents. in the names of .

Proposal that gentleman shall covenant to do all necessary acts to settle part of the property.

"The defendant [Y. Z.] for and on the behalf of the plaintiff [A. B.], proposes that [*gentleman*] should covenant with trustees, that immediately on the said [A. B.] attaining twenty-one years, he will do and execute all such acts and deeds as shall be necessary to be done on his part, for barring her estate tail in the premises comprised in the settlement of her father, and limiting the same to the following uses, namely, *To the use* of trustees during the life of the said plaintiff [A. B.], without impeachment of waste, *In trust* to preserve the contingent remainders, and *In trust* for the separate use of the said [A. B.], with a clause to prevent her anticipating the growing payments, and with a power to her when sole, to alter and revoke the trusts for her benefit, and to appoint the estate for her life, in such manner and to such uses as she shall think fit, with remainder after her death, *To the use* of the first and other sons of the said [A. B.] by the said [*gentleman*] successively in tail, with remainder *To the use* of the daughters of the said [A. B.] by the said [*gentleman*] as tenants in common in tail, with cross remainders between or amongst them in tail; with remainder to such uses and for such purposes as the said plaintiff [A. B.] shall, when free from coverture, by deed or will appoint; *And* in default of appointment, to the use of trustees and their heirs, *In trust* for the person or persons who, at her death, shall be her heir or coheirs, for an estate in fee, and in like shares as they would take an estate descending from her; but such person or persons to take as a purchaser.

To the use of trustees during the life of lady, In trust to preserve contingent remainders;

In trust for her separate use; remainder to the first and other sons of the marriage, in tail; remainder to the daughters of the marriage, as tenants in common in tail; remainder to such uses as lady shall appoint; and, in default, to her heirs.

"The defendant, for and on behalf of the plaintiff [A. B.], further proposes, that the intended settlement shall contain a power, enabling the plaintiff [A. B.], by will to charge the premises comprised in the settlement of her father, with the payment to the said [*gentleman*], and his

Powers to be contained in settlement for lady to charge

covenanted to be settled in the manner hereinafter mentioned; AND WHEREAS the said master hath accordingly approved of these presents as a proper deed for carrying the said agreement into effect, and in testimony of his approbation thereof, hath written his name in the margin of the skin of these presents, and his initials in the margins of the other skins thereof. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, and in consideration of the settlement made by the said recited indentures of lease and release, of the and days of , and in consideration of the natural love and affection which the said [*mother of lady*] hath for the said [*lady*], and for carrying into execution the said

MARRIAGE ARTICLES, WHERE THE LADY IS A WARD OF COURT.

Witnessing part, whereby, in consideration of the marriage, and in pursuance of the order, gentleman, mother of lady, and lady, so far as she can,

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assigns, during his life, in the event of his surviving her, of such annual sum or yearly rent as she shall think proper, not exceeding in the whole the sum of pounds, and to be payable yearly or half-yearly, as she shall direct, and with the usual powers and remedies for recovering the payment thereof, and to create a term of years for further securing the same.

premises in favour of gentleman by will,

"And the defendant, for and on behalf of the plaintiff [A. B.], further proposes, that the said intended settlement should contain a power, enabling the said [A. B.] by deed or will to charge the premises comprised in the settlement of her said father, with any sum or sums of money, not exceeding in the whole the sum of pounds, for or towards the portions of her daughters and younger sons by her present or any future husband, and to create a term or terms of years for raising the same, such sum or sums of money to be divided equally between or amongst them, if more than one, with a power enabling the said [A. B.] by deed or will, to apportion such sum or sums, so and in such manner as that her daughters and younger sons by the said [*gentleman*] might be entitled to one moiety of such sum or sums, and her daughters and younger sons by any future husband, may be entitled to the other moiety of such sum or sums, and the shares of the sons to be vested at twenty-one, and of the daughters at twenty-one, or on their marriage, but not to be payable till after the decease of the said [A. B.] with the usual clauses of survivorship and accruer, as to the shares of those children who shall die before their shares shall become vested; and also to direct the trustees of the term, during the minority of such daughters and younger sons, to raise after the decease of the said [A. B.], out of the rents and profits comprised in the said settlement of any sum or sums of money towards the maintenance and education of such daughters and younger sons, as the trustees shall think proper,

and portions for the younger children of the marriage.

MARRIAGE ARTICLES, WHERE THE LADY IS A WARD OF COURT.

hereinbefore recited order of the said Court of Chancery, so far as the same relates to the proposals made by the said [*gentleman*] for the settlement of the real estates of the said [*lady*]; *And* in obedience to the said order, He the said [*gentleman*], *Doth* hereby for himself, his heirs, executors, and administrators, and the said [*mother of lady*], *Doth* hereby for herself, her executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns; *And* the said [*lady*] for herself, so far as in her lies, and she can or lawfully may, *Doth* hereby consent and agree, that if the said intended marriage shall take

covenant, when lady shall attain 21, to do all necessary acts for barring all entails and settling the premises.

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not exceeding what the interest on the expectant shares of such daughters and younger sons, in the sum or sums of money which she should have charged for their portions as aforesaid, would amount to after the rate of five per cent.

and to limit a moiety of the premises in favour of a future husband,

"The defendant [Y. Z.] for and on the behalf of the plaintiff [A. B.] further proposes, that the said intended settlement should contain a power, enabling the said [A. B.] in the event of her marrying again, and either before or after her future marriage, by deed or will, to limit or appoint any part or parts, not exceeding in the whole one moiety of the premises comprised in the settlement of her said father, to such uses, for such estates, upon such trusts, and in such manner, for the benefit of any future husband, and her issue by him, as she shall think proper,

and a power of leasing for 21 years,

and a power enabling the said [A.B.], during her life, and after her decease, the trustees, during the minority of any tenant in tail, who may be entitled in possession to the premises comprised in the settlement of her said father, to lease the same for twenty-one years,

and mining leases for 31 years;

and to work the mines on the same premises, and to let on lease the same for thirty-one years;

and power to the trustees to sell and exchange, and make partition.

and also, a power enabling the trustees, on the request of the said [A. B.], to sell, exchange, and make partition of the same premises.

Further proposal, that gentleman should covenant to settle another part of of the lady's estate to the same uses and powers, except the power to charge with portions, and

"The defendant [Y. Z.], for and on the behalf of the plaintiff [A. B.], further proposes, that the said [*gentleman*] should covenant with the trustees, that when the said plaintiff [A. B.], shall have attained her age of twenty-one years, then by fine, and also after her estate in tail male in the estates of which she is tenant in tail male in remainder, under the will and codicils of her grandfather, shall, by failure of the prior limitations, come into possession, then by common recovery, he will do and execute all such acts and deeds as shall be necessary to be done and executed on his part for barring her estate in tail male in

effect, and she the said [*lady*] shall live to attain the age of twenty-one years, *They* the said [*gentleman*], [*mother of lady*], and [*lady*], according to their several and respective estates, rights, and interests in the hereditaments, shall and will, immediately on the said [*lady*] attaining the age of twenty-one years, or as soon after as conveniently may be, at the costs and charges of him the said [*gentleman*], by one or more fine or fines, or common recovery or recoveries, and such other good and sufficient conveyances, surrenders, and assurances in the law, and in such manner, as the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of

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those estates, and limiting the same to the same uses, to which the premises comprised in the settlement of her father are proposed to be limited, and with the same powers, except the power to charge with portions to the extent of pounds, but not so as to enable the said [A. B.] to double or increase the annual sum which she will be authorized to settle on the said [*gentleman*], in the event of his surviving her: and particularly with a power enabling the said plaintiff [A. B.], when her estate in tail shall come into possession, by deed or will, to charge the same estates, or any part thereof, with any sum or sums of money she shall think proper, towards the portions of her daughters and younger sons by the said [*gentleman*], or any future husband, not exceeding in the whole such a sum, as, together with the sum to be charged under the power to be contained in the settlement, to charge with portions to the extent of pounds, will amount to pounds; and to create a term of years for securing the same.

not so as to enable lady to double gentleman's sum of —*l.*;

but with a power to lady to charge the premises with any sum for the portions of children of present or future marriage, not exceeding —*l.*

"The defendant [Y.Z.] for and on the behalf of the said plaintiff [A.B.], further proposes, that the said [*gentleman*] should covenant with trustees, that upon their request, he will do all such acts and deeds as shall be necessary to be done and executed on his part, for vesting the estates at , the moiety of the leasehold premises at , the one-sixteenth of the colliery, and the implements and fixtures belonging thereto, the one eighth of the colliery, and the one-eighth of the fitting or vending of the said collieries, in trustees, and permitting the intermediate rents to be held upon such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as, regard being had to the difference in the nature and quality of the property, will, with the uses and powers to which the premises comprised in the said settlement of the said

Further proposal, that gentleman shall covenant to settle another part of the property, (leaseholds) upon trusts which will correspond to the uses before declared.

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such survivor, or their or his counsel in the law, shall require, advise, or direct, or as the said master or his successor, shall approve, convey, surrender, settle and assure, ALL and every the manors or lordships, messuages or tenements, hereditaments, and premises, comprised in and described by the schedule hereunder written and hereunto annexed, with the appurtenances, and all other the real estate of the said [*lady*], with their and every of their rights, members, and appurtenances, and the inheritance thereof respectively, discharged of and from all estates tail, and all remainders, limitations over, and reversions thereupon expectant and depending, and of and from all

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but not so as to enable her to double any sum to be charged on premises.

father of the said [A. B.] are proposed to be limited, but not so as to enable the said plaintiff to double or increase any annual or principal sum, which she will be enabled to charge under the said powers: yet so nevertheless, that the said leasehold and other premises shall not vest absolutely in any person or persons, who under the limitations to be contained in the intended settlement, shall be tenant or tenants in tail of the premises comprised in the settlement of , are proposed to be limited, unless and until such person or persons shall attain the age of twenty-one years, or become entitled to the freehold comprised in the settlement of the said father of the said [A. B.]

Provisions to be contained in settlement for renewal of leases.

"The defendant [Y. Z.] for and on the behalf the said plaintiff [A. B.] further proposes, that the said intended settlement shall contain provisions for the renewal of the leases of the leasehold estates, and of the application of part of the rents, so as to pay off any fines, and the costs of renewal, by annual instalments of one-seventh part, at the end of each of the first seven years after every renewal.

Further proposal, that gentleman will covenant to settle books, plate, and furniture upon trust, as to books and plate, to permit lady to enjoy the same for her life, and after her death, upon the same trusts as are declared of the leaseholds; and as to furniture, In trust for separate use

"The defendant [Y. Z.] for and on the behalf of the said plaintiff [A. B.] further proposes, that the said [*gentleman*] shall covenant with the trustees, that upon their request he will do and execute all such acts and deeds as shall be necessary to be done and executed for vesting in trustees the books, pictures, plate and furniture, to which the said plaintiff is entitled under the will of her father, upon the trusts following (that is to say); as to the books, pictures and plate, in trust to permit the said [A. B.] to enjoy the same to her separate use during her life, without any power to alien or dispose of the same, except on the terms of substituting others in their stead of equal or greater value; and after her decease, on the same trusts which are declared of the leasehold estates; and as to the furniture, in trust for the separate use of the said [A. B.], and to be at her absolute disposal, either by deed or will, or any note or writing under her hand: and after her decease, upon

charges and incumbrances whatsoever, (except such as appear by the said master's report, and the then subsisting leases for the time being,) so and in such manner as that the manors or lordships, messuages or tenements, hereditaments, and premises, shall and may thenceforth go, remain, and be, to the several uses, upon and for the several trusts, intents, and purposes, and with, under, and subject to the several powers, provisoes, and declarations hereinafter expressed or contained of and concerning the same (that is to say); *As* to the said hereditaments to which the said [*mother of lady*] is entitled for her life as hereinbefore is mentioned, *To the use* of the said [*mother*

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As to one part of the hereditaments, To the use of mother of lady

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trust to sell so much thereof as should not have been disposed of by her; and to stand possessed of the money arising from the sale thereof, upon the trusts to be declared in the settlement concerning the three per cent. consolidated bank annuities.

"The defendant [Y. Z.], for and on the behalf of the said plaintiff [A. B.], further proposes, that the said [*gentleman*] should covenant with the trustees, that upon their request he will do and execute all such acts and deeds as shall be necessary to be done and executed on his part, for vesting the three per cent consolidated bank annuities in trustees, upon the trusts following (that is to say): In trust for the separate use of the plaintiff[A. B.] during the joint lives of herself and the said [*gentleman*], with a clause to prevent her anticipating the growing payments during that period; and if the said [A. B.] shall survive the said [*gentleman*], in trust for the said [A.B.] during her life, and after her decease, whether it happen after the decease or in the life time of the said [*gentleman*], in trust for all the children of the said [A.B.] by the said [*gentleman*] (except the eldest or only son) in equal shares, and to be vested in the sons at twenty-one, and in the daughters at twenty-one, or on their marriage, with the usual clauses of survivorship and accruer as to the shares of those children who shall die before their shares shall have become vested; and if there shall be no child to become entitled to the above sum of pounds three per cents, under the proposed trusts, then to be upon the trusts following (that is to say); if the said plaintiff [A. B.], shall survive the said [*gentleman*], then in trust for her absolutely; but if the said [A. B.] shall die in the life time of the said [*gentleman*], in trust for her next of kin exclusively of him.

of lady, and after her decease upon trust to sell the same, and stand possessed of proceeds, upon trusts of stock.
Further proposal that gentleman should covenant to settle the stock,
In trust for separate use of lady, during joint lives of gentleman and herself,
and if she shall survive,
In trust for her for her life,
and then to the children of the marriage;
and if there shall be no child, if lady shall survive gentleman,
In trust for her absolutely; but if she shall die first,
In trust for her next of kin.

"The defendant [Y. Z.], for and on the behalf of the said plaintiff [A. B.], further proposes, that the intended settlement should contain

Further proposal that all usual clauses in

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of lady] for her life, without impeachment of waste, with remainder to the use of [*trustees*] to be for that purpose named, and their heirs, during the life of the said [*mother of lady*], *In trust* for her, and by the usual ways and means to preserve the contingent remainders; *And* as to the said hereditaments so agreed to be limited *To the use* of the said [*mother of lady*], after the death of the said [*mother of lady*]; *And* as to all other the manors or lordships, messuages or tenements, hereditaments, and premises hereinbefore covenanted and agreed to be settled, with their rights, members, and appurtenances, immediately after the said [*lady*] shall have attained the age of twenty-one years; *To the use* and intent that the [*trustees*] to be named by the said [*lady*], their heirs and assigns, may, during the joint lives of her and the said [*gentleman*], receive an annual rent of one thousand pounds of lawful money of Great Britain and Ireland, to be issuing out of the said hereditaments, and to be paid by quarterly payments, with usual powers of distress and entry, and perception of rents, issues, and profits, *In trust* to pay the said annual rent of one thousand pounds, for the sole and separate use of the said [*lady*], independently of the

for life, remainder to trustees to preserve;

and, as to that part, after death of mother, and as to all the other hereditaments, To the use that trustees to be named by lady may receive an annual sum of 1000*l.* for pin-money of lady, to be reduced by lady when of age, if she pleases, to 600*l.*

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settlements of personal estate should be inserted; and a power to lady, if she shall marry again, to appoint a moiety of the stock in favour of a future husband and issue, and power to vary the securities, and a power to convert and reconvert, and other usual clauses.

clauses for the maintenance, education, and advancement of the children during their respective minorities; and also a power, enabling the plaintiff [A. B.], in the event of her marrying again, and either before or after her future marriage, to appoint any part or parts, not exceeding in the whole one moiety of the said sum of pounds three per cents. upon such trusts, for such purposes, and in such manner, for the benefit of any future husband and her issue by him, as she shall think proper; and also a power enabling the trustees to change the securities of the above sum of pounds three per cents, with the consent of the said [A. B.], during her life, and after her decease at their discretion; and also a power enabling the trustees, with the consent of the said [A. B.], to lay out the above sum of pounds three per cents, in the purchase of land, but the land to be so purchased to be considered personal estate; and a clause, making the trustees' receipts sufficient discharges; and also a power enabling the plaintiff [A. B.], during her life, and after her decease, the surviving or continuing trustee, to appoint new trustees, and also the usual clauses for the indemnity and reimbursement of the trustees."

said [*gentleman*], in the nature of pin money; but in the conveyance or settlement so to be made as aforesaid, power shall be given to the said [*lady*], at any time after she shall have attained the said age of twenty-one years, by deed under her hand and seal, to reduce the said annual rent of one thousand pounds, to any annual sum not less than six hundred pounds; *And* subject thereto, *To the use* of the said [*gentleman*] and his assigns, for his life, without impeachment of or for any manner of waste, except in respect of felling timber for sale; with remainder *To the use* of [*trustees*] and their heirs, during the life of the said [*gentleman*], *In trust* for him and his assigns, and by the usual ways and means to preserve the contingent remainders; *And* after the decease of the said [*gentleman*], *To the use* of the said [*lady*] and her assigns, for her life, without impeachment of or for any manner of waste, except in respect of felling timber for sale, with remainder *To the use* of [*trustees*] and their heirs, during the life of the said [*lady*], *In trust* for her and her assigns, and by the usual ways and means to preserve the contingent remainders, with remainder (*d*) *To the use* of the first and every other son of the said [*gentleman*] by the said [*lady*] severally and successively, according to their respective seniorities in tail male; *And* in default of such issue, *To the use* of the first and every other daughter of the said [*gentleman*] by the said [*lady*] severally and successively, according to their respective seniorities in tail male; *And* in default of such issue, *To the use* of the first and every other son of the said [*gentleman*] by the said [*lady*] severally and successively, according to their respective seniorities in tail general; *And* in default of such issue, *To the use* of the first of every other daughter of the said [*gentleman*] by the said [*lady*] severally and successively, according to their respective seniorities, in tail general; *And* in default of such issue; (*e*) and in case the

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and subject thereto, to gentleman for life;

remainder to trustees to preserve;

remainder to lady for life, and trustees to preserve;

remainder to the sons of the marriage in tail male;

remainders to daughters in tail male;

remainder to sons in tail general;

remainder to daughters in tail general;

remainder, if

(*d*) No limitation of a term was made in these articles to trustees, to secure portions for younger children, as personal estate to a large amount was settled for that purpose by a separate deed. If a limitation of a term is intended to be introduced, see *ante*, p. 362.

Portions for younger children.

(*e*) In settlements by wards of court, limitations are usually introduced

Future marriage.

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she shall survive gentleman, to lady in fee.

but if gentleman should survive, to such uses as lady should appoint; and, in default, to her in fee.

Powers to be contained in the settlement enabling gentleman, lady, and mother of lady, and the survivor, to make leases for twenty-one years.

Power to fell timber for repairs;

said [*lady*] shall survive the said [*gentleman*], her intended husband, *To the use* of the said [*lady*], her heirs and assigns for ever; but in case the said [*lady*] should depart this life in the lifetime of the said [*gentleman*], to such uses, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers and provisoes, as the said [*lady*], notwithstanding her coverture, shall appoint; and in default of such appointment, *To the use* of the right heirs of the said [*lady*] for ever; *And* that in the settlement hereby covenanted to be made as aforesaid, powers shall be given to the said [*mother of lady*] in respect of the hereditaments to be limited to her, and subject thereto to the said [*gentleman*], and after his decease to the said [*lady*] for her life, and after her decease, to any future husband of the said [*lady*], and after the decease of such [*gentleman*] and [*lady*], and of such after taken husband, to the persons who shall be releasees to uses in the settlement, and the survivors and survivor of them, and the executors or administrators of such survivor, during the minority or respective minorities of any such child or children, as shall by virtue of the limitations to be contained in the said settlement, be for the time being entitled to the freehold or inheritance of the said manor or lordship, messuages or tenements, and hereditaments comprised therein, to limit or appoint the same, or any part or parts thereof, by way of lease, for any term not exceeding twenty-one years in possession at rack rent, and under the usual restrictions; *And* a power to the said [*gentleman*] during his life, and after his decease to the said [*lady*] during her life, (but as to the hereditaments hereinbefore limited to the said [*mother of lady*], subject and without prejudice to her life estate therein,) to fell any timber or wood, standing or being on the hereditaments to be settled as aforesaid, which may

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in favour of the children by a future marriage, *Winch* v. *James*, 4 Ves. 386; *Bathurst* v. *Murray*, 8 Ves. 74; *Wells* v. *Price*, 5 Ves. 398; *Halsey* v. *Halsey*, 9 Ves. 741; *Millett* v. *Rowse*, 7 Ves. 419; *Long* v. *Long*, 2 Sim. & Stu. 119.

be necessary or proper for repairs; *And* a power enabling the persons who shall be releasees to uses in the said settlement, and the survivor of them, and the executors or administrators of such survivor, to fell any timber or wood, standing or being on the hereditaments to be comprised in the settlement, either for the purposes of sale, or substantial improvements; *Also* to grant building or repairing leases, for such number of years, upon such terms, and in such manner, as they or he shall think proper; *And* powers to enable the same persons, who are releasees to uses in the said settlement, and the survivor or survivors of them, and the executors or administrators of such survivor, at the request in writing of the said [*gentleman*] and [*lady*], and the survivor of them, (but as to the hereditaments to be limited to the said [*mother of lady*], during her life, with her consent also in writing,) to enfranchise any copyhold estate, holden of the manor hereinbefore covenanted to be settled; and to make partition of any part or parts of the hereditaments hereby covenanted to be settled as aforesaid; *And also*, to limit or appoint any part or parts of the same hereditaments to any person or persons whomsoever, by way of sale, or in exchange for other hereditaments, and for the purpose of making or effecting any such enfranchisement, partition or division, sale or exchange, to revoke the uses in the said intended settlement, to be limited, and to appoint such other uses as the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, shall think proper, with the usual clauses for enabling the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, to give receipts or discharges to any persons purchasing any part of the said hereditaments, or paying money for equality of partition or exchange, or for the enfranchisement of such copyhold hereditaments, or any other monies, which shall become payable to such trustees, under the trusts of the settlement, with directions to the same trustees, and the survivors and survivor of them, and the executors or administrators of such survivor, to lay out the money received by them or him, on any such partition, or sale, or exchange, or for enfran-

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and to releasee to uses to cut timber for sale;

to grant building or repairing leases.

Power of enfranchisement.

Powers of partition, sale, and exchange.

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chisement, in the purchase of other estates in England, and to settle the estates so to be purchased, or which shall be received by way of partition, or exchange, or for any such enfranchisement as aforesaid, to the subsisting uses of the settlement so to be made as aforesaid, and till a purchase can be found, to lay out the money so to be received by them or him, in their or his names or name, upon government or real securities in England, with power to vary the same securities as occasion may require; and with direction to pay the interest, dividends, and annual produce thereof, to the persons for the time being entitled to the rents of the settled estates remaining unsold; *And* in the said conveyance and settlement hereby covenanted and agreed to be made as aforesaid, there shall be inserted such provisions for the appointment of new trustees, and for the indemnity of the trustees; *And* such further and other clauses, powers, provisoes, and declarations, for the further and better explaining, ascertaining, or effectuating the intent, meaning, and object of the parties hereto, (but not inconsistent with the general scope of these presents,) as by the said [*gentleman*], [*mother of lady*], and [*lady*], or the survivors or survivor of them, shall be reasonably advised, devised, and required: PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the said [*lady*] should depart this life under the age of twenty-one years, or before the settlement hereby covenanted to be made as aforesaid shall have been fully carried into effect, nothing in these presents contained shall deprive the said [*gentleman*] of the estate by the curtesy of England, which he the said [*gentleman*] might have or claim in the hereditaments, of which the said [*lady*] is, or shall or may during the said intended coverture be seised for an estate of freehold or inheritance; *And* the said [*gentleman*] for himself, his heirs, executors, and administrators, doth hereby COVENANT, promise, and agree with the said [*trustees*], their executors, administrators, and assigns, in manner following, (that is to say); That he the said [*gentleman*], his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter, at the request of the said [*trustees*], or the survivors or survivor of them, or

and necessary clauses to be inserted in settlement;

Proviso that if lady should die under the age of twenty-one, or before settlement be made, gentleman shall still be tenant to the curtesy.

Covenant by gentleman for further assurance.

the executors or administrators of such survivors, make, do, and execute, or cause to be made, done, and executed, all such acts, deeds, matters, and things whatsoever, for the corroborating, strengthening and confirming the present marriage articles, and giving effect to the covenants, stipulations, and agreements in the same contained, and for enabling the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, to carry the trusts thereof into execution, as by the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, shall or may be reasonably devised or required. (*a*) IN WITNESS, &c.

MARRIAGE ARTICLES, WHERE THE LADY IS A WARD OF COURT.

(*a*) Powers to change trustees are very rarely necessary in marriage articles, as it is not likely in ordinary cases, that they will be required to be exercised. If, however, the articles are entered into a considerable time before the settlement is made, or the trustees have immediate duties to perform, they may be inserted with advantage. See the proper form, *post*; and Vol. VI. 426.

Power to change trustees.

MARRIAGE ARTICLES, WHERE LADY IS TENANT FOR LIFE, WITH POWERS.

MARRIAGE ARTICLES *of Freeholds and Monies in the Funds, where the Property is the Lady's, she being* TENANT FOR LIFE, *with* POWERS *of limiting* RENT-CHARGE (*a*) *to* HUSBAND, *and* PORTIONING *younger* CHILDREN, *under a Family Settlement, and not having attained the Age of Twenty-five, at which Age the Property is to vest; Agreement to settle Property, so that Lady may enjoy an Annuity for her* SEPARATE USE, *that an annual Fund may be raised for the Benefit of younger Children; and that the Residue of the Rents shall be paid to the Gentleman; Agreement that Lady shall execute Powers of giving Rent-charge to the Husband, and Portions to the younger Children;* COVENANT *by Husband to take certain* NAME AND ARMS, *in conformity to a Proviso in the Settlement; Agreement by Husband and Wife to fell* TIMBER, *for the Purpose of paying a Part of a Relation's* DEBTS, *and the Residue thereof, out of the Rents.*

THIS INDENTURE, made the day of , BETWEEN [*lady*], of, &c. spinster, (the daughter and only surviving child of [R. P.], formerly of, &c. but now of, &c. and the niece of [H. S.] of, &c. deceased), of the first part; [*gentleman*] of, &c. of the second part; [*mother of lady*], of, &c. of the third part; [R. K.] of, &c. of the fourth part; and [*trustees*] of, &c. of the fifth part: WHEREAS by indentures of lease and release, bearing date respectively the and days of and made, &c. IT WAS WITNESSED, that for divers good causes and considerations him the said [H. S.] thereunto moving, and in consideration of ten shillings, &c. HE the said [H. S.] did grant, release, and convey unto the

Parties.

Recital of indentures of lease and release, whereby uncle of lady conveys pre-

Powers of jointuring, &c.

(*a*) See a settlement by a tenant for life, with powers of jointuring and charging with portions, *post.*

MARRIAGE ARTICLES, WHERE LADY IS TENANT FOR LIFE, WITH POWERS.

said [R. K.] and his heirs, the manor or lordship of and, &c. (*describe the parcels particularly*): *To hold* the same unto the said [R. K.] and his heirs, *To* the uses following, (that is to say); *To the use*, that the said [*mother of lady*] (one of the sisters of the said [H.S.]) and her assigns, might have, receive, and take, during the term of her life, one annuity or clear yearly rent of two hundred pounds, to be payable quarterly, as therein mentioned; and *To the use* that [T. W.] of, &c. another sister of the said [H. S.] (*might receive a similar annuity*); *And* subject to, and charged, and chargeable with the payment of the several annuities of two hundred pounds and two hundred pounds as aforesaid, *And* to the several powers and remedies therein given for enforcing the payment thereof respectively, *Then* as to all and singular the said manors and lordships, capital and other messuages, lands, tenements, hereditaments and premises thereinbefore granted and released as aforesaid, *To the use* of the said [R. K.] and his heirs, until [H. R. S.] (the nephew of the said [H. S.]) should attain the age of twenty-five years, or die, whichever first should happen, upon the trusts therein and hereinafter mentioned, (that is to say); *Upon* trust to receive the rents and profits of the said manors or lordships, capital and other messuages, lands, tenements, hereditaments, and premises, thereinbefore granted and released, and stand possessed thereof, *Upon trust* to pay all rates, levies, and taxes, which were then, or which might thereafter be assessed upon the same hereditaments and premises, and to make all proper and necessary repairs thereto, as he or they shall see fit; and upon further trust, to accumulate the surplus and residue of the said rents and profits, and stand possessed thereof, upon the trusts therein mentioned; *And* immediately after the said [H. R. S.] should attain the age of twenty-five years, *To the use* of the said [H. R. S.] and his assigns, during his life, without impeachment of waste, with a limitation, *To the use* of the said [R. K.] his heirs and assigns, during the life of the said [H. R. S.], *Upon trust* to preserve the contingent uses and estates thereinafter limited from being destroyed; with a limitation to the use of the first, second, and other sons

mises to the use that mother of lady may receive an annuity of 200*l.*

and, subject thereto, to the use of R. K., until nephew should attain twenty-five;

Upon trust to receive the rents,

and pay taxes and repairs, and accumulate residue upon trusts;

and when nephew should attain 25, to his use for life; remainder to R. K. to preserve;

MARRIAGE ARTICLES, WHERE LADY IS TENANT FOR LIFE, WITH POWERS.

of the body of the said [H. R. S.] severally and successively in tail male; with a limitation *To the use* of the said [R. K.], until [*lady*] should attain the age of twenty-five years, or die, whichever first should happen; *Upon the trusts* therein and hereinafter mentioned, *Upon trust* to receive the rents and profits of the said manors or lordships, capital and other messuages, lands, tenements, hereditaments, and premises, thereinbefore granted and released, and stand possessed thereof, *Upon trust* to pay all rates, levies, and taxes, which were then or which might thereafter be assessed upon the same hereditaments and premises, and to make all proper and necessary repairs thereto, as he or they should see fit; *And* upon further trust to accumulate the surplus and residue of the said rents and profits, and stand possessed thereof upon the trusts therein mentioned; *And* immediately after the said [*lady*] should attain the age of twenty-five years; *To the use* of the said [*lady*] and her assigns, during her life, without impeachment of waste; with a limitation *To the use* of the said [R. K.], his heirs and assigns, during the life of the said [*lady*], *Upon trust* to preserve the contingent uses and estates thereinafter limited, from being destroyed, with a limitation *To the use* of the first, second, and other sons of the body of the said [*lady*] severally and successively in tail male, with remainder *To the use* of the said [*mother of lady*] and her assigns for her life, without impeachment of waste, with divers remainders over, as therein mentioned; *And* it was thereby provided, agreed, and declared, that the said [R. K.], his heirs, executors, and administrators, should stand and be possessed of the said ultimate surplus of the rents, issues, and profits of the said manors or lordships, capital messuages, hereditaments, and premises, thereby granted and released, *Upon trust* thereout to levy various sums for different purposes therein mentioned; and should stand possessed of the surplus or residue thereof, upon such trusts, and for such intents and purposes as the said [H. S.] should, by any deed or writing to be executed and attested as therein is mentioned, appoint; and in default of such appointment, *Upon trust* to lay out and invest the same in the purchase of messuages, lands, or hereditaments, to be situate in England or Wales, of a

remainder to nephew's sons in tail male; remainder to R. K. until lady should attain 25, upon trust to receive the rents and pay taxes and repairs, &c. and accumulate residue upon trusts;

and when lady attains 25, to the use of lady for life; remainder to R. K. to preserve;

remainder to the sons of lady in tail-male; remainder to lady's mother for life; remainders over.

Declaration that trustee should stand possessed of surplus of rents, upon such trusts as H. S. should appoint;

and in default, to invest the same in lands;

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clear and indefeasible estate of inheritance in fee simple, and settle and assure the same to, for, and upon such uses, trusts, intents, and purposes, as were thereby expressed and declared of and concerning the hereditaments and premises thereby granted and released, or as near thereto as the circumstances would then permit, and in the mean time, and until the said purchase or purchases were made, *Upon trust* that the said [R. K.], his heirs, executors, and administrators, should from time to time lay out and invest the said accumulations in the public stocks or funds, and alter and vary the securities as occasion should require; and pay the interest, dividends, and annual produce, arising from such stocks, funds, or securities, to such person or persons, and to the same ends, intents, and purposes, as the rents and profits of the hereditaments to be purchased therewith would go and be payable, in case such purchase or purchases were actually made; *And* by the said indenture of release and settlement now in recital, it was provided that every person or persons, who by virtue of the limitations thereinbefore contained, should become entitled to the possession, or to the receipt of the rents and profits of the said manors or lordships, capital messuages, hereditaments, and premises, thereby granted and released, and the husbands of such as should be females, should apply for and endeavour to obtain an act of parliament, or proper license from the crown, or take such other ways and means as may be requisite or proper, to enable or authorise him to take and use the surname of [S.], and to quarter the arms of [S.] with his own family arms, within the space of one year next after they respectively should become entitled to the possession of the rents and profits thereof; *And* that in case any such person or persons should refuse or neglect to take such surname and arms, and to use the means necessary to enable him or them so to do, within the space of one year, to be computed as aforesaid, then the limitation thereinbefore contained to the use of such persons or person, who should so refuse or neglect, or whose husband should so refuse or neglect, should cease, determine, and become absolutely void, and the said manors or lordships, capital messuages, tenements, hereditaments, and premises,

and in the mean time

upon trust to invest the accumulation in the funds, and pay the dividends to the same persons as would be entitled to the rents.

Proviso that every person entitled to the rents shall take the name and arms of S.

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thereby granted and released, should immediately thereupon go to the person next beneficially entitled in remainder, under the limitations thereinbefore contained, in the same manner as if the person or persons whose estate or estates should so cease, was or were dead; *And* by the said indenture of release and settlement now in recital, power was given to the said [*lady*], to grant and appoint unto the use of any husband whom she might marry, for and during the life of such husband, any annual sum or yearly rent-charge, not exceeding in the whole the clear annual sum or yearly rent-charge of pounds of lawful money of Great Britain and Ireland, to be issuing out of and charged or chargeable upon all or any part of the same hereditaments and premises, and to be paid quarterly, and at such place or places, and in such manner, and with such powers and remedies by distress, entry, and perception of the rents, issues, and profits of the same hereditaments and premises, and with such term and terms of years for the better securing the payment thereof, to take effect immediately after the decease of such person, and such grant and appointment, and to be made either before or after such intermarriage, as to the said [*lady*] shall seem meet; *And* by the said indenture of release and settlement now in recital, power was given to the said [*lady*], by any deed or deeds, instrument or instruments in writing, to be by her sealed and delivered, in the presence of and attested by two or more credible witnesses, to subject and charge all or any part of the said manors or lordships, capital messuages, tenements, hereditaments, and premises, thereby granted and released, with their rights, members, and appurtenances, to and with the payment of any sum or sums of money for the portion or portions of the child or children of her the said [*lady*], by any man or men with whom she may intermarry, (other than an eldest or only son, for the time being entitled to the said manors or lordships, capital messuage, tenements, hereditaments, and premises thereby granted and released, for an estate in tail male in possession, or in remainder, expectant on the decease of the said [*lady*], not exceeding in the whole the sum of pounds of lawful money of Great Britain and Ireland, with interest for the same, at any rate not

Power for lady to grant rent-charge to husband;

and power to portion younger children.

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exceeding five pounds for every hundred pounds by the year, to be paid to and divided between all and every or any one or more of such younger children, at such ages and times, and if more than one, in such shares and proportions, and with such conditions, and in such manner, and with such term or terms for securing the same, (provided the same be made to cease when the trusts concerning the same shall have been fully performed, or shall become unnecessary), as the said [*lady*] shall direct and appoint; *And* in the said indenture of release and settlement, are contained powers of leasing, sale, and exchange, and for the change, indemnification, and reimbursement of trustees: AND WHEREAS the said [R. K.] hath, in execution of the said trusts, paid and applied the said sum of pounds, &c. &c.: AND WHEREAS the said [H. S.] departed this life on, &c. without having exercised the power so reserved to him as aforesaid, of appointing the residue of the ultimate surplus of the said rents and profits: AND WHEREAS the said [H. R. S.] departed this life on, &c. without issue: AND WHEREAS the said [*lady*] will attain the age of twenty-five years on the day of : AND WHEREAS no part of the residue or ultimate surplus of the rents and profits or personal estate has been laid out in real estate, but large sums have been expended in or about the repairs of the said premises, and the ultimate surplus now consists of the sum of pounds three pounds per cent. consolidated Bank annuities, standing in the name of the said [R. K.], (*Agreement for marriage, as ante*, 360): AND WHEREAS it hath been agreed, that the sum to which the said [*lady*] will be entitled up to the period of her attaining the said age of twenty-five years, and the life estate and interests to which she will then become entitled, of and in all the real estate comprised in, or limited by, or subject to, the trusts of the said recited indentures of lease and release and settlement, as aforesaid, shall be settled upon and for the trusts, intents, and purposes hereinafter also mentioned; and that the powers of charging given to her by the said recited indenture of release and settlement, shall be exercised by her in the manner hereinafter contained; but by reason of the said [*lady*] not having attained the age of twenty-five years, a valid settlement cannot at present be

Other powers.

Payment of sums.

Death of settlor without executing power.

Death of nephew.

That lady will be of age on the — day of ——. That no lands have been purchased.

That life interest shall be settled as hereinafter is mentioned.

That powers shall be executed, but that no valid settlement can be made.

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made; and it has therefore been agreed, that the same shall rest on articles of agreement until the said [*lady*] shall attain her said age of twenty-five years: AND WHEREAS the said [H. R. S.], whilst at Oxford, contracted debts to the amount of pounds, or thereabouts, which the said [*gentleman*], [*lady*], and [*mother of lady*], are desirous should be paid: NOW THIS INDENTURE WITNESSETH, and it is hereby agreed between the said [*gentleman*] and [*lady*], that in case the said intended marriage shall take effect, and the said [*lady*] should live to attain the age of twenty-five years, *They* the said [*gentleman*] and [*lady*], or the said [*lady*] alone, if the said [*gentleman*] shall be then dead, shall and will, at the request of the said [*trustees*], or the survivor of them, or the executors and administrators of such survivor, and at the proper costs and charges in the law of the said [*gentleman*], if then living, or if then dead, then of the said [*lady*], make, do, levy, and execute, and join and concur in making, doing, levying, and executing such acts, deeds, fines, assurances, and other matters and things in the law, as the said [*trustees*], or the survivor of them, or the executors and administrators of such survivor, or his or their counsel in the law, shall in that behalf advise, devise, or require, for well and effectually conveying all and singular the said manors or lordships, capital messuage, hereditaments, and premises, limited and settled by the said [H. S.] or so to be purchased as aforesaid, unto the said [*trustees*], or the survivor of them, or the executors or administrators of the survivor, for the term of ninety-nine years, if the said [*lady*] shall so long live, but without prejudice to any of the powers given or limited to the said [*lady*], in or by the said recited indentures of release and settlement; and for assigning unto the said trustees or trustee all the personal estate to which she shall or may become possessed or entitled for her life, under or by virtue of the limitations or trusts contained in the said recited indenture of release and settlement; [*And* in the said intended settlement, trusts shall be declared to the effect hereinafter contained (that is to say); that the trustees or trustee for the time being shall stand and be possessed of all the said real and personal estate, *Upon trust*, yearly and

Desire to discharge nephew's debts.

First witnessing part, whereby gentleman and lady agree, on the latter attaining 25, to do all necessary acts for conveying the premises unto trustees,

for the term of ninety-nine years, if lady should so long live.

Declaration, that trustees shall stand possessed of premises

Upon trust during joint

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every year, during the joint lives of the said [*gentleman*] and [*lady*], by and out of the rents, issues, and profits, dividends, interest, and annual produce thereof, to levy and raise the annual sum of pounds, clear of all deductions, and pay the same by equal half yearly payments, on Lady-day and Michaelmas-day in every year, to such person or persons only, and for such intents and purposes only, as the said [*lady*], notwithstanding her intended coverture, and as if she were sole and unmarried, shall by any writing under her hand appoint; but not so as to deprive herself of the benefit thereof, by mortgage, sale, or charge, or other mode of anticipation; *And* in default of such appointment, into the proper hands of the said [*lady*], for her sole and separate use, by way of pinone y; *And* her receipts to be good discharges for the same; and subject thereto, *Upon trust* that the said trustees or trustee for the time being, do and shall yearly and every year after the day of but not sooner, during the joint lives of the said [*gentleman*] and [*lady*], by and out of the said rents, issues, and profits, interest, dividends, and annual produce, levy and raise the annual sum of three hundred pounds, clear of all deductions, and stand possessed thereof, upon the trusts hereinafter contained; *And* further, that subject to the several trusts aforesaid, the said rents, issues, and profits, interest, dividends, and annual produce, shall be in trust for the said [*gentleman*] for his life, and after his decease, in trust for the said [*lady*], during the remainder of her life, in case she shall survive him, subject nevertheless to the payment of the said annual sum of three hundred pounds, *Upon the trusts* hereinafter contained, in case there shall be any younger child or children of the said intended marriage living, or who shall have died, attaining a vested interest in the trust fund hereinafter mentioned; *And* it is hereby further agreed and declared, that in and by the said intended settlement, the said [*lady*] shall, in due form of law, exercise her said power of appointing the said annual rentcharge, or annual sum of pounds, to and in favour of the said [*gentleman*] for his life; *And* shall also exercise to its full extent the power to her limited of

lives of lady and gentleman, to raise the annual sum of —*l.* for such purposes as lady shall appoint; and, in default, to lady herself for her separate use;

and, subject thereto, Upon trust to raise the annual sum of 300*l.* upon the trusts hereinafter mentioned;

and, subject thereto, the rents to be in trust for gentleman for his life, and after his death, for lady.

Agreement that lady shall exercise her power of giving rentcharges to husband, and of giving portions.

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appointing portions in favour, or for the benefit of the younger children of the said intended marriage, so far as they can become entitled thereto, under the said recited indenture of settlement, with such clauses of survivorship and accruer and maintenance, and term or terms of years for securing the same provisions, as shall by the said trustees or trustee, for the time being, or their or his counsel in the law, be deemed advisable in that behalf; *And* further, that in such intended settlement, trusts shall be contained for the investment, by the trustees or trustee for the time being, of the said annual sums of three hundred pounds, so to be levied and raised as aforesaid, in or upon some of the parliamentary stocks, or public funds of Great Britain, or at interest on mortgage of real estate, or on government securities, to be from time to time varied and altered, with the approbation of the said [*gentleman*] and [*lady*], or the survivor of them, during his and her lives and life, and afterwards at the discretion of the said trustees or trustee for the time being; *And* that the interest, dividends, and annual produce of the said invested trust fund, shall be payable to the said [*gentleman*] during his life, and after his decease, to the said [*lady*], for her life; and that after the decease of the survivor of them, the said invested trust funds shall be declared to be in trust for all and every, or any one or more of the younger children of the said intended marriage, as they or the survivor of them shall by deed or will legally executed appoint; and in default thereof, in trust for such younger children equally, to be interests vested in sons at twenty-one, and in daughters at twenty-one, or marriage, with benefit of survivorship or accruer between the said children; and that in case there shall be no younger children of the said intended marriage, who shall become absolutely entitled to the said trust fund, the said trust fund shall be declared to be in trust for the survivor of them, the said [*gentleman*] and [*lady*], his or her executors, administrators, and assigns; *And* it is hereby also further agreed and declared, that in the settlement so to be made as aforesaid, a power shall be contained, to enable the said trustees or trustee for the time being, with the consent of the said [*gentleman*] and

That trusts shall be inserted in settlement for the investment of the annual sum of 300*l.* and for the settlement thereof upon the parents and children.

Advancement clause to be inserted in settlement,

[*lady*], or the survivor of them, to advance the whole or any part of the presumptive share of any child, of and in the said trust fund, for or towards purchasing a commission in the army for such child, being a son, or for or towards the preferment, advancement, or benefit of any such child, in such manner as the said [*gentleman*] and [*lady*], or the survivor of them, should direct: *And* it is hereby further agreed and declared, that in the settlement so to be made as aforesaid, there shall be contained all proper clauses, directions, and agreements for enabling the trustees or trustee for the time being, to be therein named, to execute and perform the trusts to be in them respectively reposed, and for the appointment of new trustees, in the event or stead of any of the trustees dying or declining to act in, or desiring to be discharged from, the trusts reposed in him or them respectively; and for the indemnity of the said trustees, and for authorising them to deduct and detain the costs and expenses to be incurred by them in the execution of the trusts so to be reposed in them; and also such further and other clauses, declarations, powers, provisoes, and agreements, not being inconsistent with or repugnant to the general scope and true intent and meaning of these presents, as by the counsel in the law of the said trustees or trustee respectively, or the executors or administrators of the survivor of them, shall in that behalf be advised; *And* the said [*gentleman*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, that if the said intended marriage shall take effect, and the said [*lady*] shall live to attain the age of twenty-one years, HE, the said [*gentleman*] shall and will, within the space of one year next after the said [*lady*] shall attain the said age of twenty-one years (if not sooner), take upon himself and use, in all deeds and writings, whereto or wherein he shall be a party, the surname of [S.] only, and no other surname, and shall and will quarter the arms of [S.] with his own family arms, and within the space of one year (if not sooner), apply, sue for, and endeavour to obtain, at his own costs and charges, an act of parliament, or proper license from

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and all other proper, usual, and necessary clauses.

Covenant by gentleman to take certain name and arms.

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the crown, or take such other means as may be requisite or proper, to enable and authorise him to take and bear the surname and arms of [S.] only, and shall and will continue to use such surname during the period of his life; AND THIS INDENTURE ALSO WITNESSETH, and the said [*gentleman*] and [*lady*] do hereby declare, that if the said intended marriage shall take place, and the said [*lady*] shall live to attain the age of twenty-five years, *They*, the said [*gentleman*] and [*lady*], or the said [*lady*] alone, if the said [*gentleman*] shall be then dead, shall and will, to the full extent of the power and authority which shall be then vested in the said [*lady*], or the said [*gentleman*] in her right, fell and cut, or cause to be felled and cut down, the timber for the time being standing and growing on the aforesaid hereditaments, and which shall be fit to be felled and cut down, and shall and will dispose of the same, and apply the net monies to be produced thereby in and towards discharge of the debts so contracted by the said [H. R. S.] as aforesaid, so far as the same means will extend; and shall and will, out of the accruing rents and profits of the said hereditaments, without prejudice to the said annual sum as aforesaid, pay and satisfy all the remaining debts of the said [H. R. S.], within the space of two years next after the said [*lady*] shall attain the age of twenty-five years, in case the said [*lady*] shall so long live. IN WITNESS, &c.

Second witnessing part, whereby gentleman and lady agree to fell timber and apply the proceeds in discharge of debts of nephew, so far as it will extend, and pay the residue out of the rents within two years time.

OF FREEHOLDS ON MARRIAGE.

SIMPLE FORM, WITH VARIATIONS.

MARRIAGE SETTLEMENT (*a*) *of Freeholds, whereby Gentleman (Tenant in Fee Simple) conveys the Property to the following Uses : to the Use of himself until the Marriage, and after the Marriage, Remainder to the Use of Trustees for Ninety-nine Years; Remainder to the Use of himself for Life ; Remainder to the Use of Trustees to preserve ; Remainder to the Use that the Lady may receive a Rent-charge, with Powers of Entry, Distress, and Perception of the Rents and Profits ; Remainder to the Use of other Trustees for Five Hundred Years ; Remainder to the Use of the First and other Sons of the Marriage, in tail general ; Remainder to the Use of the Daughters as Tenants in common in tail, with cross Remainders ; Remainder to the Use of the Gentleman in Fee.*—ACCUMULATION CLAUSE.—DECLARATION *that the Term of Ninety-nine Years is in Trust to secure* PIN-MONEY *of Wife, and Proviso for its Cesser.*—DECLARATION *that the Term of Five Hundred Years is in Trust to secure* RENT-CHARGE *to Wife and* PORTIONS *to younger Children, increasing in amount according to their Number, and subject to the Appointment of the Gentleman and Lady, and of the Survivor of them.*—PROVISIONS *for Survivorship and Accruer, for Hotchpot, for the Maintenance and Advancement of the Children, and for the Merger of the Daughters' Portions, for the Receipt of the Rents by the Reversioner, and for the Cesser*

(*a*) In this and the following precedent the practitioner will find all the forms which are usually introduced into settlements of freehold property ; the more special settlements will be given afterwards.

All usual limitations will be found in this and the next precedent.

OF FREEHOLDS ON MARRIAGE.

of the Term.—POWERS *for leasing for Twenty-one Years, and for leasing for building for Ninety-nine Years, and for Sale and Exchange; to grant Jointure to any after-taken Wife, and to charge Premises with Portions for younger Children by any future Marriage.*—COVENANTS *for Title.*—POWER *to change* TRUSTEES, *and Provisions for their Indemnity and Reimbursement; with* VARIATIONS *for the* LADY *having a Fortune settled by separate Deeds; for an Estate for Life being limited to Lady; and for* SPECIAL POWERS *being inserted.*

Parties.

THIS INDENTURE, made the day of BETWEEN (*b*) [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; [*first trustees, releasees to uses to preserve contingent remainders, and donees of powers of sale and exchange*] of, &c. of the third part; [*second trustees, trustees for the term for securing wife's pin-money*] of, &c. of the fourth part; and [*third trustees, trustees of term for securing jointure and portions of younger children*] of, &c. of the fifth part (*c*): WHEREAS a marriage is intend-

Recital of intended marriage.

Parties.

(*b*) As to the order in which parties should stand, see *ante*, p. 353, and the observations on parties to marriage articles, *ante*, p. 359; which will equally apply to settlements. And see also the succeeding forms.

Where the gentleman and his trustee to bar dower are seised of the estate, the trustee should be a party, and the deeds conveying the estate should be vested, as *ante*, Vol. VI. 271. And the gentleman and his trustee should appoint and convey, as *ante*, Vol. VI. p. 273, 274.

Recitals, what proper.

(*c*) It will, in all usual cases, be proper to recite the principal deeds, wills, or instruments, under which the parties are entitled to the property to be settled, and not to commence with a simple recital of seisin, as above; and see *ante*, p. 359, 375. And for all the usual recitals, the reader is referred to the Index, word RECITALS, and to the preceding and succeeding forms.

Lady's fortune. Practical direction.

The fortune of the lady is frequently settled in the same deed as the gentleman's, and forms will hereafter be given for joint settlements. But where the property of both parties is large, separate deeds are usually adopted; in which case they should be here recited. See the subsequent forms, and *ante*, 375.

ed to be shortly had and solemnized between the said [*gentleman*] and [*lady*]; NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage(*d*), and for making such provision and settlement

OF FREEHOLDS, ON MARRIAGE.

Where the lady's portion is, in consideration of the settlement, paid over to the gentleman, this fact should be recited as follows:

"*And* on the treaty for the said marriage, it was agreed that the said [*father or guardian of lady, who should be a party to the settlement, either of the same part, or of the next part to the lady*], should pay the sum of pounds to the said [*gentleman*], as and for the marriage portion of the said [*lady*]; AND WHEREAS the said [*father or guardian*], hath this day accordingly paid over to the said [*gentleman*] the sum of pounds, as he the said [*gentleman*] doth hereby admit and acknowledge."

Recital of agreement to settle property.

The following recital is frequently introduced, and in this case the clause at the commencement of the witnessing part to the same effect should be omitted:

"AND WHEREAS upon the treaty for the said marriage, it was agreed that the said messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, should be settled and assured to the uses, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, and declarations, hereinafter expressed and declared of and concerning the same."

Consideration, lady's fortune.

(*d*) If the lady have a fortune, and it is paid over to the gentleman say,

"*And* also in consideration of the portion or fortune of the said [*lady*],"

Or if it be settled, say,

"*And* also in consideration of the settlement made, or intended to be made of the property of the said [*lady*], by the hereinbefore recited indenture [*or* indentures]".

Future property.

If the settlement is made in consideration of all the property of the lady, as well in possession as in expectancy, say,

"*And* also in consideration, as well of the fortune or portion of the said [*lady*], so settled as hereinbefore is men-

OF FREEHOLDS, ON MARRIAGE.

for the said [*lady*], and the issue of the intended marriage as hereinafter mentioned; and for settling and assuring the hereditaments hereinafter granted and released, or intended so to be, with the appurtenances, to the uses, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, declarations and agreements hereinafter contained; *And*, in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*first trustees*] to the said [*gentleman*] in hand paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), HE the said [*gentleman*], *Hath* granted, bargained, sold, released and confirmed, *And* by these presents, *Doth* grant, bargain, sell, release, and confirm, unto the said [*first trustees*] (in their actual possession, &c. *reference to lease for a year*) and to their heirs, ALL, &c. (*describe the parcels*) *Together* with, &c. (*general words.*) *And* the reversion &c. *And* all the estate, &c. TO HAVE AND TO HOLD the messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*first trustees*] and their heirs; nevertheless to the uses, upon the trusts, intents, and purposes, and under and subject to the powers, provisoes, agreements, and declarations hereinafter limited, expressed, and declared of and concerning the same, (that is to say;) *To the use* of the said [*gentleman*] and his heirs (*e*), until the solemnization of the said intended marriage, and from and after the solemnization thereof, to the use of the said [*lady*] and her heirs, during the joint lives of the said [*gentleman*] and [*lady*], without impeachment of waste, and after the decease of either of them, to the use of the survivor of them and his or her heirs, during the residue of his or her life, without impeachment of waste, and from and after the decease of the survivor of them, to the use of the heirs of the body of the said [*lady*] by the said [*gentleman*] to be begotten, and for want of such issue, to the use of such person or persons, and for such estate or estates, as the said [*lady*] shall, notwithstanding her coverture, by any deed or writing, or by her last will and testament, or any codicil thereto, duly executed by her, direct or appoint, and for want of such appointment, to the use of the said [*lady*] and her heirs, subject nevertheless to the payment by the said [*gentleman*] and [*lady*], or the survivor of them, or the heirs of the survivor of them, of the yearly sum of £ to the said [*first trustees*], for the term of their natural lives, by quarterly payments, the first payment to be made at the end of three calendar months next after the decease of the survivor of them, the said [*gentleman*] and [*lady*], and subject to the payment of the said annuity, to the use of the said [*first trustees*] and their heirs, during the life of the survivor of them, upon trust to raise the said annuity, and to pay the same accordingly, and subject thereto, to the use of the said [*gentleman*] and his heirs, during the life of the said [*lady*], upon trust to support the contingent uses and estates hereinafter limited, and subject thereto, to the use of the said [*gentleman*] and his heirs, until the marriage, and from and after the marriage, to the use of the said [*gentleman*] and his heirs, during the joint lives of the said [*gentleman*] and [*lady*], without impeachment of waste, and after the decease of either of them, to the use of the survivor of them and his or her heirs, during the residue of his or her life, without impeachment of waste, and from and after the decease of the survivor of them, to the use of the heirs of the body of the said [*gentleman*] by the said [*lady*] to be begotten, and for want of such issue, to the use of such person or persons, and for such estate or estates, as the said [*gentleman*] shall, notwithstanding his coverture, by any deed or writing, or by his last will and testament, or any codicil thereto, duly executed by him, direct or appoint, and for want of such appointment, to the use of the said [*gentleman*] and his heirs, subject nevertheless to the payment by the said [*gentleman*] and [*lady*], or the survivor of them, or the heirs of the survivor of them, of the yearly sum of £ to the said [*first trustees*], for the term of their natural lives, by quarterly payments, the first payment to be made at the end of three calendar months next after the decease of the survivor of them, the said [*gentleman*] and [*lady*], and subject to the payment of the said annuity, to the use of the said [*first trustees*] and their heirs, during the life of the survivor of them, upon trust to raise the said annuity, and to pay the same accordingly, and subject thereto, to the use of the said [*lady*] and her heirs, during the life of the said [*gentleman*], upon trust to support the contingent uses and estates hereinafter limited, and subject thereto, to the use of the said [*lady*] and her heirs, until the marriage, and from and after the marriage

tended marriage, and immediately from and after the solemnization thereof, *To the use* of the said [*second trustees*], their executors, administrators, and assigns, for and during, and unto the full end and term (*f*) of ninety-nine years, without impeachment of or for any manner of waste; *Upon the trusts*, and for the intents and purposes, and under and subject to the provisions hereinafter expressed and declared of and concerning the same: *And* immediately from and after the expiration or other sooner determination of the said term of ninety-nine years, and in the mean time subject thereto, and to the trusts thereof; *To the use* of the said [*gentleman*] and his assigns, for and during the term of his natural life (*g*), without impeachment of or for

age, and after the marriage, to the use of second trustees for 99 years, upon the trusts hereinafter mentioned; remainder to the use of gentleman for life;

By indentures of lease and release, bearing date the 1st and 2d of Jan. 1819, and made between Walter Trevelyan, of the first part, the plaintiff; Raliegh Trevelyan, of the second part; Robert Grey, of the third part; Elizabeth Grey, of the fourth part; and trustees, of the fifth part; lands were limited unto the said trustees, their heirs and assigns, to the use of Walter Trevelyan and his heirs, until the said marriage between the plaintiff and Elizabeth Grey should be had, and after the solemnization thereof, to the use of Walter Trevelyan and his assigns, for the natural life of plaintiff, without impeachment of waste; and after the decease of plaintiff, to the intent that Elizabeth Grey might receive a rent-charge for her life; and a term was limited for securing the same, with divers remainders over, and the ultimate remainder to Walter Trevelyan in fee: The marriage took effect, but after the date of the indenture, and before the solemnization of the marriage, Walter Trevelyan, died, leaving the plaintiff, his heir at law, him surviving, and it was held, that the executors of Walter Trevelyan took no estate or interest in the lands, and that the plaintiff as heir at law and under the limitation of the settlement, took an estate in fee, subject to the term and other powers for securing the annuity to the wife. *Trevelyan* v. *Trevelyan*, 3 Bing. 617.

(*f*) This term, which is intended to secure the pin money to the wife, should always be limited before the life estate of the husband.

Term of 99 years.

(*g*) Instead of giving the gentleman an estate for life, a term of one hundred years is sometimes given to him, if he shall so long live. But this mode is attended with the inconvenience, that no recovery can be suffered in the life time of the gentleman without the concurrence of the trustees who have the freehold; and this the trustees cannot be advised to give without the direction of the Court of Chancery. *Dor-*

Term of years sometimes given to gentleman.

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any manner of waste (*h*); *And* immediately from and after the determination of that estate by forfeiture or otherwise, in the life-time of the said [*gentleman*], *To the use* of the said [*first trustees*], their heirs and assigns, during the life (*i*) of the said [*gentleman*], *In trust* to preserve the contingent uses and estates hereinafter limited, from being defeated or destroyed; *But* nevertheless to permit and suffer the said [*gentleman*] and his assigns to have, receive, and take the rents, issues, and profits of the said messuages or tenements, hereditaments, and premises hereby granted and released, or intended so to be, with their appurtenances, during his life, for his and their own use and benefit, and immediately from and

remainder to the use of trustees to preserve contingent remainders;

remainder to the use that

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mer v. *Parkhurst*, 18 Vin. Ab. 413; *Tipper's* case, 1 P. Wms., 359; *Else* v. *Osborne*, 1 P. Wms. 387; *Basset* v. *Clapham*, 1 P. Wms. 358; *Winnington* v. *Foley*, 1 P. Wms. 536; *Townshend* v. *Lawton*, 1 P. Wms. 379. But where the object of the parties is to keep the estate as long in the family as possible, such a limitation may be advantageous. This subject will be considered in a subsequent note.

Waste, what will be restrained.

(*h*) Under these words the tenant for life has at common law full power over the timber growing on the estate; but he will be restrained in equity from cutting down timber or other trees, planted for the ornament or shelter of the mansion house, or from pulling down houses, *Packington's* case, 3 Atk. 215; *Burgess* v. *Lamb*, 16 Ves. 183; in which last case, however, it was said that the doctrine of equitable waste would not be extended; but the general doctrine is too firmly settled to be altered. See *Lushington* v. *Boldero*, 6 Mad. 149; *Brydges* v. *Stephens*, 6 Mad. 279; *Newdigate* v. *Newdigate*, 1 Sim. 131.

Limitation to trustees to support contingent remainders. Caution required.

(*i*) In limiting the estates of trustees to preserve contingent remainders, care must always be taken, merely to give them an estate *for the life* of the preceding tenant for life. If these words are omitted, they will take the legal fee, and all the subsequent estates will be merely equitable. See 3 Byth. 524. A very late case on this point has just been reported. Under a settlement and recovery, the lands were limited to the use of A. for life, and after his decease, to the use of B. and his heirs, during the life of A., to support contingent remainders, remainder to the use of C. for life, remainder to B. and his heirs during the life of C. to support contingent remainders. remainder to the first and other sons of C. in tail male, remainder to the use of D. for life, and if she should marry, and her husband

after the decease of the said [*gentleman*], *To the use*, intent (*k*), and purpose, that the said [*lady*], in case she should survive the said [*gentleman*], and her assigns, shall and may, from and after his decease, receive and take, during her natural life, for her jointure, and in lieu, bar, and satisfaction of all dower, or thirds, to which at common law, or by custom (*l*), she might otherwise be entitled, from any lands, or other hereditaments, of which the said [*gentleman*] shall, during the joint lives of him and the said [*lady*], be seised for any estate of in-

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lady, if she survives gentleman, may receive rent-charge, in bar of dower,

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should survive her, to her husband for his life; and after the determination of those estates, to the said B. *and his heirs, to support* contingent remainders, remainder to the first and other sons of D. in tail, remainder to the use of E. for life, remainder to B. *and his heirs, to support* contingent remainders; remainder over. It was held, that under the limitation to B. and his heirs, after the estates for life of D. and E., B. took the fee, and that E. and the subsequent remainder men took mere equitable estates, although the limitation was repeated. *Elmore v. Tindall*, 2 Yo. & Jerv. 605.

(*k*) A rent charge is more usually limited to the wife, as above; but an estate for life is sometimes given her, as follows; and when her own property is settled, she very generally take this estate:

Estate for life to the wife;

"*To the use* of the said [*lady*] and her assigns, for and during the term of her natural life, without impeachment of waste; and immediately after the determination of that estate by forfeiture or otherwise, in the lifetime of the said [*lady*], *To the use* of the said [*first trustees*], their heirs and assigns, during the life of the said [*lady*], in trust, to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions, as occasion shall require; but nevertheless to permit and suffer the said [*lady*] and her assigns to have, receive, and take the rents, issues, and profits of the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, during her life, for her and their own use and benefit, and after the decease of the said [*lady*], *To the use*," &c. *of sons, as above.*

remainder to the trustees to preserve.

(*l*) This must be expressed, if so intended; see *ante*, p. 332.

Customary rights.

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heritance, the annual sum, or yearly rent of pounds, of lawful money of Great Britain and Ireland, to be charged upon, and yearly issuing and payable out of all and singular the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, and to be paid to the said [*lady*], or her assigns, at or in the Common Dining Hall of Lincoln's Inn, in the county of Middlesex, by four equal quarterly payments, on the twenty-fifth day of March, the twenty-first day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year, without any deduction or abatement whatsoever out of the same, or any part thereof, on account of any (*m*) taxes, charges, rates, impositions, or assessments whatsoever, either already taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed, on the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, or on the said annual sum of pounds, or upon any person or persons for or in respect of the same, by authority of parliament, or otherwise howsoever, or for or in respect of any other matter, cause, or thing whatsoever; *And* the first quarterly payment to be made on such of the said days as shall happen next after the decease of the said [*gentleman*]; *And* to and for this further use, intent, and purpose, *That* in case and so often as the said annual sum, or yearly rent of pounds, or any part thereof, shall be unpaid for the space of twenty-one days next after the days hereby appointed for the payment of the same, *Then* and so often as it shall so happen, it shall and may be lawful to and for the said [*lady*], her executors, administrators, and assigns, to enter into and distrain for the same, and for the costs and charges occasioned by the nonpayment thereof, upon the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, or any part thereof, and to dispose of the

with power, if rent-charge shall be in arrear for 21 days, to enter and distrain for the amount;

Taxes and deductions.

(*m*) These words are necessary. It is not sufficient to give the wife "a *clear* sum of pounds. See *post*, note on JOINTURES.

distress and distresses then and there found, according to law, as landlords may for rent reserved upon leases for years, to the intent that thereby, or otherwise, the said annual sum, or yearly rent of pounds, and every part thereof, so in arrear and unpaid, and all costs, charges, and expenses occasioned by reason of the non-payment thereof, shall be fully paid and satisfied; *And* to and for this further use, intent, and purpose, that in case, and so often as the said annual sum, or yearly rent of pounds, or any part thereof, shall at any time or times be unpaid, for the space of forty days next after any of the said days or times hereinbefore appointed for the payment thereof, then and so often (*n*) (although no legal demand shall have been made thereof, or of the arrears thereof) it shall be lawful for the said [*lady*], her executors, administrators, and assigns, to enter into and upon, and to hold the said messuages or tenements, hereditaments, and premises, hereby granted and released, or intended so to be, and to receive and take the rents, issues, and profits thereof, for her and their proper use and benefit, until she or they shall be therewith or thereby, or otherwise, fully paid and satisfied the said annual sum or yearly rent of pounds, and the arrears due at the time of such entry, or afterwards to become due, during her or their being in possession of the same hereditaments and premises, together with all costs, charges, and expenses, which she or they shall sustain by reason of the nonpayment thereof, and such possession, when taken, to be without impeachment of waste; *And* as to, for, and concerning all and singular the messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with the appurtenances, from and after the decease of the said [*gentleman*], subject to, and charged with, the said yearly rent-charge, or sum of pounds,

and power, if rent shall be 40 days in arrear, to enter and receive the rents until the same is paid;

remainder to the use of trustees for 500 years.

(*n*) No person can take advantage of a condition of entry, unless there be a previous demand of the rent, or unless there be a stipulation to the contrary. Co. Litt. 201, b. 5 Co. 40 b. 1 Roll. Ab. 459. Entry.

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and to the remedies hereby provided for the recovery thereof, *To the use* of the said [*third trustees*], their executors, administrators, and assigns, for and during, and unto the full end and term of five hundred years thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, upon the several trusts, intents, and purposes, and under and subject to the several provisoes and agreements hereinafter expressed and declared of and concerning the same; and from and after the end, expiration, or other sooner determination of the said term of five hundred years, and in the mean time subject thereto, and to the trusts thereof, and charged and chargeable as aforesaid, *To the use* (*o*) of the first son of the said [*gentleman*], on the body of the said [*lady*] to be begotten, and of the heirs of the body of such first son lawfully issuing; and for default of such issue, *To the use* of the second, third, fourth, fifth, and all and every other son and sons of the said [*gentleman*], on the body of the said [*lady*] to be begotten, severally, successively, and in remainder, one after another, as they and every of them shall be in seniority of age and priority of birth, and of the several and respective heirs of the body and bodies of all and every such son and sons lawfully issuing; the elder of such sons, and the heirs male of his body issuing, being always to be preferred, and to take before the younger of such sons, and the heirs male of his and their body, and respective bodies issuing; and for default of such issue, *To the use* of all and every the daughter and daughters of the said [*gentleman*], on the body of the said [*lady*] to be begotten, to be divided between or amongst them (if more than one) in equal shares, as tenants in common, and of the heirs of the body and respective bodies of all and every such daughter and daughters

remainder to the use of the first son of the marriage in tail;

remainder to second and other sons of the marriage in tail;

remainder to the use of the daughters, as tenants in common in tail, with cross remainders in tail;

Limitations to children.

(*o*) In limitations to the children, care must always be taken to provide, first, for the sons of the sons; secondly, for the daughters of the sons; thirdly, for the sons of the daughters; and fourthly, for the daughters of the daughters, in such priority as the parties may please. See the limitations to the children, in the next precedent.

issuing; and in case there shall be more than one daughter of the said [*gentleman*] by the said [*lady*], and there shall be a failure of issue of any one or more of them, then as well as to the share or shares originally limited to the daughter or daughters so dying, and whose issue shall so fail, as the share or shares surviving and accruing to her or them, or to her or their issue, *To the use* of all and every other the daughter and daughters of the said [*gentleman*], on the body of the said [*lady*] to be begotten, to be divided between or amongst them, if more than one, in equal shares, as tenants in common, and of the heirs of the body or respective bodies of all and every such daughter or daughters issuing; and if all the daughters of the said [*gentleman*] by the said [*lady*], except one, shall die without issue, or if there shall be but one such daughter, then as to the entirety of the said hereditaments and premises, *To the use* of such one or only daughter, and the heirs of her body issuing; *And* for default of such issue, *To the use* of the said [*gentleman*] his heirs and assigns for ever (*p*): PROVIDED ALSO, and it is

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and if all the daughters shall die but one, the whole to the use of that one;

remainder to the use of gentleman in fee.

(*p*) The following late case on the construction of a settlement, may here be mentioned.

Heir male.

By marriage settlements between W. M. and J. M. son and heir apparent of W. M. of the first part; J. H. and M. H. of the second part; and L. G. and J. H. trustees, of the third part: W. M. and J. M. bargained and sold to the trustees certain lands called *Ninnesses* and *Landry's Fields*, and other lands called *Varwell*, then in possession of W. M. and J. M., to hold unto the trustees, their heirs and assigns, as to *Landry's Fields* and *Ninnesses*, to the use of the said W. M. for life, remainder to the use of the trustees, during the life of W. M. upon trust, to preserve contingent remainders, with remainder to the use of the said J. M. for life, remainder to the said trustees and their heirs, during the life of J. M. upon trust to reserve contingent remainders, with remainder to the first and other sons of J. M. by M. H. successively, in tail male, with remainder to the use of the right heirs male of J. M. for ever; and as to all the other settled premises, to the use of J. M. for life, with remainder to the use of trustees, their heirs and assigns, during the life of J. M., in trust to preserve contingent remainders, with remainder to the use of M. H. for her life, for raising out of the rents and profits an annuity of 25*l.* per annum, and subject thereto to the use of the first and other sons of J. M. by M. H. successively,

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Provision for the receipt of rents and profits during the minority of any person entitled in possession to the hereditaments,

hereby agreed and declared between and by the parties to these presents, that if at any time within the period of twenty-one years, to be computed from the decease (*q*) of the said [*gentleman*], the person for the time being beneficially entitled in possession to the rents, issues, and profits of the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, shall be under the age of twenty-one years, *Then* and in such case, and so often as the same shall happen, they the said [*first trustees*], and the survivor of them, and the executors and administrators of such survivor, *Do* and shall (but subject and without prejudice to the charges hereinbefore created; and to the said terms of ninety-nine years, and five hundred years, and to the respective trusts hereinbefore

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in tail male, with remainder for want of issue male of T. M. on the body of M. H. begotten, or if such issue male should die without issue male, and J. M. should have any daughter or daughters by M. H. at the time of his death, then that the trustees, their heirs and assigns, should stand seised of the said hereditaments, to the use of the issue female of J. M. by M. H. for raising portions as therein mentioned, for such daughter and daughters; and that until twenty-one, the trustees and their heirs should, out of the rents, raise such maintenance for such daughter and daughters, as to the trustees should seem meet; and after raising the said sums for the maintenance for such daughter and daughters as aforesaid, or in default of issue female, to the use of the *right heir male of* J. M. *for ever*: Held, first, that the last words were words of limitation, and not of purchase, and that J. M. took the ultimate remainder in fee; and, 2dly, if they were words of purchase, still they would create a contingent remainder during the life of J. M., which would vest immediately on his death in his heir, who might devise the same. Thirdly, that by the limitations as to *Varwell* and *Crugmore closes*, the trustees took an estate only during the infancy of the daughter; and fourthly, even if they took a fee, it was a fee determinable when the portions should have been raised; and twenty years of possession adverse to their claim having occurred, the presumption was, that the right of the trustees had been released and satisfied, *Doe* d. *Burne* v. *Martin*, 8 B. and C. 497.

Accumulation.

(*q*) This is the utmost limit allowed to the accumulation of the rents and profits of real estate. The subject of accumulation and perpetuities, will be hereafter considered. See INDEX, under these words.

declared of and concerning the same, and to the uses and estates to be created by virtue of the powers hereinafter contained), during such minority, receive and take the rents, issues, and profits of the said manors and other hereditaments, and apply from time to time, so much and such part thereof, as they in their discretion shall think fit, not exceeding in the whole, in any one year, the sum of pounds, for or towards the maintenance and education of the person so for the time being beneficially entitled as aforesaid, and lay out and invest the residue in their or his names, or name, in the purchase of a competent share, or competent shares, in the parliamentary stocks or public funds of Great Britain, or upon real securities in England or Wales, to be from time to time altered and varied, as occasion shall require, and receive the interest, dividends, and annual produce of the said stock, funds, and securities, and lay out and invest the same in or upon stocks, funds, and securities of the like nature, so that the same rents, issues, and profits, stocks, funds, securities, interest, dividends, and annual produce, may during such minority as aforesaid be accumulated: *And* it is hereby agreed and declared, that the said [*first trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of and interested in the said rents, issues, and profits, stocks, funds, securities, interest, dividends, and annual produce, and the accumulations thereof respectively, *Upon trust*, at the end of such minority, or sooner, if they or he shall think fit and proper, to call in and convert the same respectively into money, and by, with, and out of the money to be produced thereby, to pay off and discharge any sum or sums of money, which shall have then been charged on the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, or any of them, under or by virtue of the trusts of the said term of five hundred years, or which shall have been charged on the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, or any of them, under and by virtue of the powers hereinafter contained, and subject

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and application thereof,

for maintenance and education of such person, and the investing the residue on government or real securities, and accumulate the produce.

Declaration, that the trustees shall be interested in the accumulated fund,

Upon trust, at the end of minority, to convert the same into money,

and discharge incumbrances charged on hereditaments,

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and invest the residue in the purchase of freehold estates of inheritance, and settle the same to the uses hereinbefore expressed.

thereto, do and shall lay out and invest the money so to be produced as last hereinbefore is mentioned, or so much thereof as shall remain after answering the purposes aforesaid, in the purchase of or upon freehold estates of inheritance, to be situate in England, or copyhold or leasehold lands, convenient to be held therewith, or with the messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be; *And* do and shall settle and assure, or cause to be settled and assured, the lands and hereditaments so to be purchased as last hereinbefore is mentioned, in such manner as hereinbefore expressed, with respect to the lands from the rents and profits of which such accumulations shall have proceeded, or as near thereto as the deaths of parties and other circumstances will then admit: but if any such investment shall be made, during the continuance of the period of accumulation, the rents and profits of the lands so to be purchased, shall be accumulated in the manner and for the purposes hereinbefore mentioned: *And it is hereby agreed and declared* between and by the parties hereto, that the said messuages or tenements, lands, hereditaments, and premises hereby limited to the use of the said [*second trustees*], their executors, administrators, and assigns, for the term of ninety-nine years as hereinbefore is mentioned, are so limited *Upon trust* that they the said [*second trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, during the joint lives of the said [*gentleman*] and [*lady*], by, with, and out of the rents, issues, and profits of the said messuages or tenements, lands, hereditaments, and premises, comprised in the said term of ninety-nine years, or by mortgage, sale, or other disposition of the said messuages or tenements, lands, hereditaments, and premises, or any of them, or any part thereof, for all or any part of the said term of ninety-nine years therein, or by bringing actions against any of the tenants or occupiers of the premises for the rent then in arrear, or by all or any of the said ways or means, levy and raise the annual sum of . . . . . pounds of lawful money of Great Britain and Ireland, free and clear from all taxes

Declaration, that the hereditaments are limited to second trustees for the term of ninety-nine years,

In trust by sale or mortgage thereof, to raise pin-money for wife, for her separate use;

and deductions whatsoever, and do and shall pay, apply, and dispose of the same by quarterly payments, on the days of payment hereinbefore mentioned, by even and equal portions, unto such person or persons, and for such intents and purposes only, as the said [*lady*], by any writing or writings under her hand, from time to time, notwithstanding her coverture (but not by way of anticipation), shall direct or appoint; and in default of such direction or appointment, do and shall pay the said annual sum of pounds, or so much thereof whereof she shall make no such direction or appointment as aforesaid, into the proper hands of the said [*lady*], to and for her separate use and benefit, and not to be subject to the debts, contracts, engagements, or controul of the said [*gentleman*]; *And* the receipt or receipts in writing of the said [*lady*], or of such person or persons as she shall from time to time direct or appoint to receive all or any part of the said annual sum of pounds, shall from time to time, notwithstanding the said intended coverture, be good and effectual receipts and discharges for such sums of money as in such receipts and discharges shall be respectively expressed to be received; the first quarterly payment of the said annual sum of pounds, to be made on such of the said days of payment, as shall first happen, after the solemnization of the said marriage; *And* upon further trust that they the said [*second trustees*], their executors, administrators, and assigns, shall and do permit and suffer the said [*gentleman*] and his assigns, to receive and take the residue and overplus of the said rents, issues, and profits of the premises, after full payment and satisfaction of the said annual sum of pounds, and all costs and expenses attending the execution of the aforesaid trusts, or in relation thereto, to and for his and their own use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that when the trusts hereinbefore declared, of and concerning the said term of ninety-nine years, shall be fully performed and satisfied, or shall become unnecessary, or incapable of taking effect, and all the costs and charges of the said [*second trustees*], and each of

and the receipts of the lady shall be sufficient discharges.

and upon trust to permit the gentleman to receive the residue of the rents.

Proviso for cesser of term.

OF FREEHOLDS, ON MARRIAGE.

them, and each of their executors, administrators, and assigns (if any) attending the same, shall be fully paid off and discharged, then and in such case, and immediately thereupon, the said term of ninety-nine years shall, subject, and without prejudice to any disposition which shall have been made of the premises comprised therein for the purposes aforesaid, absolutely cease, determine, and be void; PROVIDED ALWAYS that if at the time of the decease of the said [*gentleman*] and [*lady*], or at any time during their joint lives, there shall through the wilful neglect or default of her the said [*lady*], or her trustees, be more in arrear of the said annual sum of pounds, than two (*r*) years payment thereof, then and in every such case, no further or other sum shall be raised to answer such arrears, than what shall amount in the whole to two years payment of the said annual sum; *And it is hereby agreed and declared* between and by the parties to these presents, that the said hereditaments and premises are hereby limited to the said [*third trustees*], their executors, administrators, and assigns, for the said term of five hundred years (*s*), *Upon trust*, that the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, in case and so often as the said annual sum or yearly rent of pounds, or any part thereof, shall happen to be behind and unpaid by the space of sixty days, *Then* and so often, it shall be lawful for the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, from time to time, by and out of the rents, issues, and profits of the said hereditaments comprised in the said term of five hundred years, by de-

Proviso that no greater arrear of pin-money than two years shall be recoverable.

Declaration that the term of 500 years is limited to trustees upon trust

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Arrear.

(*r*) If this is not otherwise provided for, only one year's arrear can be recovered; see *ante*, 341.

What terms advisable for raising jointure and portions.

(*s*) Where the size of the estate admits it, it is advisable to charge a different part of the estate with the jointure, from that which is charged with a term of years for portions. If this cannot be done, separate terms for securing the jointure and portions are to be recommended, although, when the property is ample, they may be as in the above precedent, secured by the same term. See the next precedent.

mising, leasing, or mortgaging the same hereditaments, or any part thereof, for all or any part of the said term, or by bringing actions against the tenants or occupiers of the same premises, for receiving the rents, issues, and profits thereof, or by more than one of, or by all the aforesaid means, or by such other reasonable ways and means, as to the said [*third trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall seem meet, raise and pay to the said [*lady*] and her assigns the said annual sum or yearly rent of pounds, and all arrears thereof which shall be due and unpaid, or which shall afterwards during their continuance in possession accrue, and all costs, charges, and expenses, which the said [*lady*] and her assigns, or the said [*third trustees*], and the survivor of them, or the executors, administrators, or assigns of such survivor, or any of them, shall sustain by reason of the non-payment thereof; *And* subject thereto, and to the powers and remedies for securing the same, upon this further trust, that if there shall be any child or children of the said [*gentleman*] by the said [*lady*], (other than and besides an eldest or only son, who by virtue of, or under the limitations hereinbefore contained, shall, for the time being, be entitled to the hereditaments and premises hereinbefore mentioned, expectant on the said term of five hundred years), *Then* and in such case the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, *Do* and shall, by demising, assuring, or otherwise disposing of the said hereditaments and premises comprised in the said term, or any of them, for all or any part of the said term, or by bringing actions against the tenants or occupiers of the same hereditaments and premises, or any of them, for the rent then in arrear, or by more than one, or by all of the aforesaid ways and means, or by any other ways and means, levy and raise, for the portion or portions of such child or children other than and besides an only son as aforesaid, the sum of pounds of lawful money of Great Britain and Ireland; *And* the said sum of pounds, to be an interest vested in and to be paid to all and every, or such one or more exclusively of the other or others of

to receive the said rent of —*l.* for lady;

and upon further trust, by sale, mortgage, or otherwise,

levy and raise for the portions of younger children the sum of —*l.* in such shares and manner as gentleman and lady should jointly appoint;

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the child or children of the said [*gentleman*] by the said [*lady*], (other than and besides an eldest or only son,) so for the time being entitled as aforesaid, or all and every exclusively of the other or others of any issue born in the life time of the said [*gentleman*] and [*lady*], or the survivors of them, or of any such children, (other than and besides an eldest or only son, so for the time being entitled as aforesaid), with such provisions for their respective maintenance or education, and at such age, day, or time, or respective ages, days, or times, not happening after twenty-one years, to be computed from the decease of the survivor of them the said [*gentleman*] and [*lady*], and if more than one, in such parts, shares, and proportions, and charged with such annual sums of money and limitations over for the benefit of such children or issue, or some or one of them, and upon such conditions, with such restrictions, and in such manner, as the said [*gentleman*] and [*lady*] shall during their joint lives, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of, and to be attested by two or more credible witnesses, from time to time, direct and appoint; *And* in default of such joint direction or appointment, and so far as any such joint direction or appointment shall not extend, then as the survivor of them, the said [*gentleman*] and [*lady*], by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by him or her sealed and delivered in the presence of two or more credible witnesses, or by his or her last will and testament in writing, or by any codicil or codicils thereto, to be by him or her signed, sealed, and published, in the presence of and attested by three or more credible witmesses, shall from time to time, direct or appoint; *And* in default of such last mentioned direction or appointment, or so far as the same if incomplete, shall not extend, then, if there be but one (*t*) child of the said [*gentleman*] by the said [*lady*] (other than or besides an eldest or only son

and in default of such joint appointment, as survivor of them the said gentleman and lady should appoint;

and in default of such last-mentioned appointment, if if there shall be one such child,

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Reference to other form.

(*t*) If one sum is to be raised for portions, whatsoever may be the number of the children, see the next precedent.

so for the time being entitled as aforesaid) the said sum of pounds, to be an interest vested (*u*), or interests vested in such only child, being a son, at his age of twenty-one years, and being a daughter, at her age of twenty-one years, or at the day of her marriage under that age, with the consent of her guardian or guardians for the time being, to be signified by some writing under his, her, or their hand or hands, and to be paid to him or her at the same age, day, or time, if the same shall happen after the decease of the said [*gentleman*] (*v*); but if the same shall happen in the life time of the said [*gentleman*], then immediately after his decease, and if there shall be two or more

such child, the sum of —*l.*

and if two or more such children, the sum of —*l.* in equal shares.

(*u*) If the settlement clearly and unequivocally makes the right of the child to a provision depend upon its surviving both or either of the parents, a court of equity has no authority to controul that disposition. But if the settlement is incorrectly or ambiguously worded, or if it contains conflicting and contradictory clauses, so as to leave in a degree uncertain the period at which, or the contingency upon which the shares are to vest, the court leans strongly towards the construction which gives a vested interest to the child, when that child stands in need of a provision, usually, as to a son, at the age of twenty-one, and as to a daughter, at that age or marriage. *Howgrave* v. *Cartier*, 3 Ves. & Bea. 79; S. C. Coop. 66. *Hotchkin* v. *Humfrey*, 2 Madd. 65.

Vesting of portions.

And where it clearly appeared from the terms of the settlement, that the sums to be raised as portions for younger children, were to be vested interests at the age of twenty-one, although the payment was postponed till after the decease of the parents, and there was an express provision, that in a particular case, *viz.* a younger son becoming an elder son *during his minority*, should lose his share of the provision, it was held, that as he attained twenty-one in the lifetime of his elder brother, although he afterwards became an elder son, yet his share was not divested. *Windham* v. *Graham*, 1 Russ. 331.

These cases shew how carefully clauses of this nature must be worded. The above clause, it will be seen, provides for all these events.

(*v*) Where the lady takes an estate for life, say, "the said [*gentleman*] and [*lady*], but if the same shall happen in the lifetime of the said [*gentleman*] and [*lady*], or in the lifetime of the survivor of them, then immediately after the decease of such survivor, and if there," &c.

Wife taking life estate.

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such children, other than or besides an eldest or only son, so for the time being entitled as aforesaid, *Then* in default of such direction or appointment as aforesaid, the said sum of pounds, to be for the portions of such two or more children, to be divided between or among them in equal shares; *And* the shares or share of such of them as shall be a son or sons, to be an interest vested or interests vested in him or them respectively at his or their age or respective ages of twenty-one years, and if a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage under that age, with the consent of her or their guardians or guardian, to be signified as aforesaid, and to be paid to him, her, or them respectively, on or at the same ages, days, or times respectively, if the same respectively shall happen after the decease of the said [*gentleman*](*w*); *But* if the same shall happen in the life time of the said [*gentleman*], then immediately after his decease. PROVIDED ALWAYS, that if any such child or children, being a younger son, shall depart this life or become an eldest or only son, so for the time being entitled as aforesaid, or being a daughter, shall depart this life before the share hereby intended for him, her, or them respectively shall so become vested as aforesaid, then and in such case, if no direction or appointment shall be made by the said [*gentleman*] and [*lady*], or the survivor of them, to the contrary, as well the original share hereby appointed for every such younger son so dying as aforesaid, or becoming an eldest or only son entitled as aforesaid, and for every such daughter so dying, as the share or shares which by virtue of this present clause shall have survived or accrued to him, her, or them respectively, or so much thereof respectively as shall not have been previously applied for her or their preferment or advancement in the world, by virtue or in pursuance of the power or authority hereinafter for that purpose

Provision for survivorship and accruer.

Wife taking life estate.

(*w*) If the lady takes an estate for life, say, "and [*lady*] his wife; but if the same shall happen in the lifetime of them or the survivor of them, then immediately after the decease of such survivor"

contained, shall from time to time go, accrue, and belong to the survivors and survivor, and others and other of the said children, and so far as circumstances will admit, shall vest in and be paid to him, her, or them (if more than one) in equal shares, at such time or times, and in such manner as is hereinafter expressed and declared touching or concerning his, her, or their original portion or portions; PROVIDED ALWAYS nevertheless, and it is hereby agreed and declared between and by the parties to these presents, that no child or children taking any part of the said sum of pounds, under or by virtue of any direction or appointment to be made by the said [*gentleman*] and [*lady*], or the survivor of them, in pursuance of the powers or authorities hereinbefore for that purpose contained, or either of them, shall be entitled to any share of or in the unappointed part of the said sum of pounds, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly. PROVIDED ALWAYS nevertheless, and it is hereby agreed and declared between and by the parties to these presents, *That* it shall and may be lawful to and for the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, at any time or times after the decease of the survivor of them the said [*gentleman*] and [*lady*], with and out of the rents, issues, and profits of the said hereditaments and premises hereby granted and released, or intended so to be, to levy and raise, and pay and apply for the maintenance(*x*) and education of the said child or children for the time being of the said [*gentleman*] by the said [*lady*], for whom a por-

Hotchpot clause.

Provisions for the maintenance and education of the younger children.

(*x*) Where it was expressly directed by marriage articles, that maintenance of younger children was to continue until the portions which were the subject of a further charge were payable and paid; *viz.* until the younger children became entitled, it was held, that the mere improbability of providing a larger fund for maintenance and education than the mere income of their future portions, which were wholly in the discretion of the appointor, was not sufficient to controul the expressed intent of the instrument, and that the plaintiff was entitled to have the fund for the maintenance raised, until the portion should become payable. *Poulet* v. *Poulet*, 6 Madd. 167.

Maintenance.

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tion or portions is or are hereby intended to be provided as aforesaid, in the mean time, and until his, her, or their portion, or respective portions, shall become payable, such yearly sums or sum of money as they or he shall think proper, not exceeding in any one year what the interest of the then presumptive portion or portions of such child or children respectively, under the trusts of the said term of years, would amount to, after the rate of five pounds for every hundred pounds by the year; PROVIDED ALSO that it shall and may be lawful to and for the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, during the life of the said [*gentleman*] (*y*), with his consent and approbation, signified by some deed or deeds, instrument or instruments in writing, to be by him sealed and delivered, in the presence of and attested by two or more credible witnesses, *And* after the decease of the said [*gentleman*], then at the discretion and of the proper authority of the said [*third trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, to levy and raise, by the ways and means aforesaid, or any of them, and to apply for the advancement or preferment in the world, or otherwise, for the benefit of the child and children of the said [*gentleman*] by the said [*lady*], other than and except an eldest or only son, so for the time entitled as aforesaid, any sum or sums of money, not exceeding in the whole one moiety or equal half part of the then vested or

Provision for the advancement of the children.

Wife taking life estate.

(*y*) Where the lady takes a life estate, say,

"and lady, with the consent and approbation of the said [*gentleman*] and [*lady*], signified by some deed or deeds, instrument or instruments in writing, to be by them sealed and delivered, in the presence of, and attested by, two or more credible witnesses, and in default of such joint consent and approbation, then after the decease of such of them the said [*gentleman*] and [*lady*] who shall first depart this life, with the consent and approbation of the survivor of them the said [*gentleman*], and [*lady*] his intended wife, so signified as aforesaid; and after the decease of such survivor at the," &c.

then presumptive portion or portions of such child or children respectively, and the same shall be considered and taken as part of the said portion or portions, provided, or intended to be provided, for such child or children respectively; PROVIDED ALSO, that if the said [*gentleman*] during his (*z*) life, shall in his life time, give and advance to and with any child or children, for whom a portion or portions is or are intended to be hereby provided as aforesaid, any sum or sums of money, for or towards his, her, or their preferment or advancement in the world, *Then* and in such case, unless the said [*gentleman*] (*a*) shall by some writing under his hand direct the contrary, if such advanced sum or sums of money shall be less than such portion or portions, the same shall be considered as part only of his, her, or their portion or portions, *And* such money only shall be raised for the portion or portions of the child or children to or with whom such sum or sums of money shall be so given or advanced by the said [*gentleman*] (*b*) as aforesaid, as, together with the sum or sums of money so to be given or advanced, will amount to, or complete the sum or sums of money intended to be hereby provided for such child or children respectively; but if such advanced sum or sums of money shall be equal to or more than the portion or portions, intended to be hereby provided for such child or children respectively, as aforesaid, the same shall be accounted in full satisfaction of the whole of such his, her, or their portion or portions; *And* then and in such case, the said [*gentleman*] (*c*), his

Proviso for advancement by gentleman in his life-time.

(*z*) If lady takes an estate for life, say, "during the joint lives of himself and the said [*lady*], or if the survivor of them shall," &c. Wife taking estate for life.

(*a*) If lady takes an estate for life, say, "and [*lady*], as the case may be, shall by some writing under his or her hand," &c. Wife taking life estate.

(*b*) If lady takes a life estate, say, "and [*lady*], as the case may be, as aforesaid," Wife taking life estate.

(*c*) If the lady takes a life estate, say, "and [*lady*], their respective heirs, executors, and administrators, as the case may be, shall be entitled to the Wife taking life estate.

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executors and administrators, shall be entitled to the sum or sums of money, so to be advanced by him as aforesaid; *And* the same shall be considered as part of his personal estate, unless the said [*gentleman*] shall by some writing under his hand, direct the contrary, and make some particular disposition, or direct the application of the same (*d*); PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, *That* if there shall be no son or sons of the said intended marriage, or being one or more such son or sons, if such son, or all such sons if more than one, shall depart this life without issue male of his, their, or any of their respective bodies, *And* if there shall be one or more daughter or daughters of the said intended marriage, and such daughter or daughters, by virtue of or under the limitations hereinbefore contained, shall become entitled in possession in remainder expectant on the decease of the said [*gentleman*] (*e*) to the messuages or tenements, lands, hereditaments, or premises hereby granted and released, or intended so to be, before any portion or portions hereby intended to be provided for such daughter or daughters so becoming seised or entitled, shall become vested in her

Proviso if there shall be no sons of the marriage who shall become entitled, and the daughters shall become entitled under the provisions hereinbefore mentioned, before any portions shall be raised,

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sum or sums of money so to be advanced by him or her as aforesaid; and the same shall be considered as part of his or her personal estate, unless the said [*gentleman*] or [*lady*], as the case may be, shall by some writing under his or her hand," &c.

Advancement by parent.

(*d*) If a parent advances a child, the effect of such advancement is not clear, as it is doubtful whether the other children are to be entitled to the whole sum directed to be raised, in exclusion of the child advanced, or whether the sum advanced is to be kept on foot as part of the personal estate of the parent. *Folkes* v. *Western*, 9 Ves. 456. Or whether so much of the original sum directed to be raised, as will be equal to the sum advanced, will be extinguished for the benefit of the persons in remainder. *Pitfield's case*, 2 P. W. 513. The clause given above therefore is necessary.

Wife taking life estate.

(*e*) If the lady takes a life estate, say,

" of the survivor of them the said [*gentleman*] and [*lady*] to the," &c.

or them respectively, *Then* and in such case, the portion or portions of such daughter or daughters respectively, or so much thereof respectively as shall not have been raised under or by virtue of the authority hereinbefore for that purpose contained as aforesaid, shall not be raised, but the same shall be merged or extinguished in the freehold and inheritance of the said hereditaments and premises comprised in the said term of five hundred years: *And* the said hereditaments and premises shall be for ever thenceforth freed, discharged, and exonerated from the said portion or portions, and all interest due, or to become due, for or in respect of the same: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, *That* the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall permit and suffer the rents, issues, and profits of the said hereditaments and premises comprised in the said term of five hundred years, or so much thereof as shall remain after, or not be applied upon or for answering the trusts and purposes aforesaid, to be received by the person or persons who by virtue of or under the limitations hereinbefore contained, shall for the time being be entitled to the said hereditaments and premises in remainder or reversion immediately expectant on the determination of the said term: (*f*) PROVIDED ALWAYS, and it is

then portions shall not be raised.

Provision that residue of rents shall be received by reversioner.

(*f*) The following proviso is often inserted before the proviso for cesser, instead of the above:

"PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties hereto, that the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall not sell, mortgage, or demise any part or parts of the said messuages or tenements, lands, hereditaments, and premises, comprised in the said term of five hundred years, until some one of the said portions, or some part thereof, shall become payable by virtue of and under the trusts aforesaid; *And* that the rents, issues, and profits thereof, or so much thereof as shall remain after answering the trusts aforesaid, shall, until some one such portion shall become

Proviso that trustees shall not mortgage, sell, or demise, until some one of the portions shall be payable;

and permit the residue to be received by the reversioner

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hereby agreed and declared between and by the parties to these presents, That when the trusts hereinbefore declared of and concerning the said term of years, shall be fully performed and satisfied, or shall become unnecessary, or incapable of taking effect, and all costs, charges, and expenses of the said [*third trustees*], and each of them, and their, and each of their executors, administrators, and assigns, if any attending the same, shall be fully paid off and discharged, *Then* and in such case, and immediately thereupon, the said term of five hundred years shall, subject and without prejudice to any disposition which shall have been made of the premises comprised therein for the purposes aforesaid, absolutely cease, determine, and be void, any thing hereinbefore contained to the contrary thereof notwithstanding: PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, *That* it (*g*) shall and may be lawful to and for the said

Proviso for cesser of term.

Power to gentleman and to trustees, during minorities, to lease for twenty-one years.

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payable as aforesaid, be had and received by the person or persons who, for the time being, shall be entitled to the same messuages or tenements, lands, hereditaments, and premises, in reversion or remainder expectant on the determination of the same term, to and for his and their own use and benefit."

(*g*) The following somewhat special powers, are also frequently introduced.

Power for the gentleman, during his life, and for guardians of the children of the marriage during minorities, to lease for three lives.

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, *That* it shall and may be lawful for the said [*gentleman*] during his life, and after his decease, for the guardian or guardians for the time being of any child or children of the said [*gentleman*] on the body of the said [*lady*] lawfully to be begotten, who by virtue of, or under the limitations hereinbefore contained shall, from time to time, be entitled to the possession or receipt of the rents and profits of the said messuages and tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, during the minority, or respective minorities of such child or children, by any deed or deeds [*or if part of the premises consists of copyholds*, or by any copy or copies of court

[*gentleman*] and also to and for the said [*first trustees*] and the survivor of them, and the executors or administrators

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roll], to demise, lease, or grant such part and parts of the said messuages and tenements, lands, hereditaments, and premises, as are now, or have been usually demised or leased, [or have been granted by copy of court roll] for one or more life or lives, or for years determinable on the dropping of one or more life or lives, to any person or persons, for one, two, or three lives, or for any term or number of years, determinable on the death or deaths of one, two, or three person or persons, either in possession or in reversion, and to accept or take any fine or premium for the making or granting of every such lease or grant, so that there be not more than three lives in being at most, upon any part of the said premises so to be granted or leased, at any one time; and so that no such grantee or lessee, his, her, or their heirs, executors, administrators and assigns, be made dispunishable for waste, by any express words therein; and so that upon every such grant or lease, the usual and accustomed rents, heriots, and services, at the least, or proportional rents, heriots and services, where a greater or lesser part of any farm or farms, tenement or tenements shall, either separately, or together with any other part or parcel of the same premises or other lands, be demised or granted, or rents, heriots or services, amounting in the aggregate to the usual rents, heriots, and services, where two or more farms or tenements shall be granted or demised together, be reserved and made payable during the continuance of such grant or lease; *And* it is hereby agreed and declared, that the rent or rents to be reserved upon every such grant or lease, shall be incident to and shall go along with the immediate reversion expectant on such grant or lease; *And* that in every such grant or lease, [other than upon grants or demises by copy of court-roll], there shall be contained a clause of re-entry, upon non-payment of the rent or rents to be thereby reserved for the space of twenty-one days after any part thereof shall become due; and that the respective lessees of the said freehold here-

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of such survivor, (*h*) from time to time, and at all times during the minority or respective minorities of any child or

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ditaments shall execute counterparts of their respective leases; PROVIDED ALWAYS, that if any such grant or lease shall be made by the guardian or guardians of any infant child or children, for the time being entitled as aforesaid, then the fines or premiums, fine or premium, which shall be received in every such lease or grant, shall be considered as part of the personal estate of the child or children for the time being entitled to the possession or receipt of the rents and profits of the hereditaments which shall be so granted or demised as aforesaid.

Proviso that the premiums shall be considered as part of the personal estate of the infant, if lease is made during infancy.

Power to the first trustee, with consent of gentleman, during his life, and after his decease with consent of person entitled to

"PROVIDED ALWAYS,* and it is hereby agreed and declared, between and by the parties to these presents, *That* it shall be lawful for the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, from time to time, and at all times hereafter, with the consent of the said [*gentleman*], during his life,

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Leases.

(*h*) As to what leases will be allowed under such a power, see title, LEASE.

Wife taking estate for life.

When the lady takes an estate for life, it is usual to extend the power of leasing to the gentleman and lady jointly, and to the survivor; in which case say,

"lawful for the said [*gentleman*] and [*lady*], during their joint lives, and after the decease of either of them, for the survivor of them, during his or her life,"

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* This power was settled by Mr. Sanders and Mr. Brodie. Mr. Sanders observes, 1 Us. & Tr. that when it was intended to authorize the grant of reversionary leases under a power of leasing, the practice seems to have been to enable the donee of the power to grant a lease, to commence from, or after, the expiration of the existing lease; but as the grant of such a rent was in effect the grant of an *interesse termini*, it did not carry the immediate reversion expectant on the subsisting lease, nor the rent reserved upon the first lease: it was a lease to commence *in futuro*. A lease granted under such a power was also objectionable on the ground of its tending to a perpetuity. The above power was intended to obviate this inconvenience.

children, who by virtue of any of the limitations aforesaid, shall be entitled to any estate of freehold and inheritance

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and after his decease, with the consent of the person, who for the time being shall, under and by virtue of the limitations contained in the said recited indenture of appointment, release, and settlement, be tenant for life or in tail male in possession, or actually entitled to the receipt of the rents, issues, and profits of the messuages and tenements, lands, hereditaments, and premises, thereby limited, and for the time being remaining in strict settlement, if such person be of the age of twenty-years or upwards; but if such person shall be under that age, then during the minority of such person, with the consent of his guardian or guardians (every such consent to be testified by some writing under the hand or hands of the person or persons, whose consent shall for the time being be requisite), by any deed or deeds, instrument or instruments, in writing, either referring or not referring to this present power, to be sealed and delivered by the said [*first trustees*], or the survivor of them, or the executors or administrators of such survivor, in the presence of, and attested by two or more credible witnesses, to demise and lease the messuages and hereditaments comprised in the leases particularised in the first schedule, written under or hereunto annexed, or any of them, or any part or parts thereof, to any person or persons whomsoever, for any term not exceeding ninety-nine years, to take effect in possession, and not in reversion, or by way of future interest, and at such yearly rent or rents, to be reserved on every such demise or lease, and to be made payable during the term thereby to be created, as the said [*first trustees*], or the survivor of them, or the executors or administrators of such survivor, shall in their or his full discretion, and without being answerable or accountable for the exercise of such discretion, think fit; and so that there be contained in every such demise or lease, a clause, in the nature of a consideration for re-entry, on the nonpayment of the rent or rents (not being a peppercorn rent), thereby reserved, in case the same, or any part thereof, shall be in arrear

the rents, or their guardians during minority, to grant leases for 99 years, for fines, where the property is subject to subsisting leases.

OF FREEHOLDS, ON MARRIAGE.

of and in the same premises, by any deed or deeds, instrument or instruments in writing, either referring, or

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for the space of twenty-one days, next after the same shall become due and payable; and so that the lessee or lessees be not by any clause or words to be contained therein made dispunishable for waste, or exempted from punishment for committing waste; and for the granting every such demise and lease, the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, shall accept as a fine or premium, such a sum of money as they or he shall, in their or his full discretion, and without being answerable or accountable for the exercise of such discretion, think fit; *And*, it is hereby further agreed and declared, that concurrent leases may be granted under the power hereinbefore contained, and that every lease to be granted under the said power, shall be valid and effectual, notwithstanding that at the time of granting such lease, the hereditaments therein comprised, shall be subject to one or more existing lease or leases thereof; *And* it is also further provided, agreed, and declared, that the sums to be raised by the said [*first trustees*], or the survivor of them, or the executors or administrators of such survivor, by fines or premiums, on the granting of the lease or leases, under the power aforesaid, shall not exceed in the whole the sum of pounds; *And* it is also hereby further agreed and declared, that the receipts in writing of the said [*first trustees*], or the survivor of them, or the executors or administrators of such survivor, for any sum or sums of money which shall be accepted by him or them, as fines or premiums for the granting of any lease or leases, under the power hereinbefore contained, shall effectually discharge the person or persons paying the same; and that no such lease to be granted under such power as aforesaid, shall be invalidated, notwithstanding more than the sums hereby authorized to be raised, shall have been so raised."

Agreement that concurrent leases may be granted,

and that the fines shall not exceed —*l.*

and that the receipts of the trustees shall be valid discharges for fines.

Power for gentleman, and after his decease, for the

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that it shall and may be lawful to and for the said [*gentleman*], during

not referring to this present power, to be sealed and delivered by them respectively in the presence of and

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his life, and after his decease, to and for the persons, who by virtue of or under the limitations hereinbefore contained, shall for the time being, be entitled to the actual possession or receipt of the rents and profits of the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, in case such person shall be of full age, but if not, then for the guardian or guardians for the time being of such person during his minority, to grant, demise, or lease all or any part or parts of the said hereditaments and premises hereby granted and released, or intended so to be, which consist of uncultivated or waste lands, and also all or any part or parts of the said hereditaments and premises, which have been at any time or times hereafter allotted in respect of the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof, or any hereditaments and premises which shall hereafter be allotted, from or out of any common or commons, or waste lands whatsoever, that have been, or shall or may at any time or times hereafter, be divided and enclosed, unto any person or persons, for one, two, or three life or lives, or for any term or number of years determinable on the death of one, two, or three person or persons, either in possession or reversion, so that there be no more than three lives in being at most, upon any part of the said premises so to be demised or leased at any one time, together with full power, liberty, and authority to dig for clay, gravel, sand, peat, or other soil, and all other things necessary for the making of bricks or tiles, to be used in and about the building and erecting such houses, cottages, and other buildings as are hereinafter mentioned, or in or about the manuring or improving the lands so to be demised or leased as last mentioned; and also to erect, build, and set up upon the lands so to be demised and leased, or any part or parts thereof, all such sheds and other buildings as shall from time to time be necessary for the making or burning

persons entitled to the rents, or their guardians during minorities, to grant leases of waste lands, or of lands to be allowed in lieu of any part of the hereditaments, for three lives.

with power to dig for clay, &c. to make bricks.

OF FREEHOLDS, ON MARRIAGE.

attested by two or more credible witnesses, to limit or appoint by way of demise or lease, all or any part of the

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such bricks or tiles as aforesaid, or which may be necessary for any workmen, horses, carriages, utensils, or materials to be employed or used in or about the digging of such stone, gravel, sand, or other soil, or the making or burning of such bricks or tiles as aforesaid, and also full and free liberty, power, and authority to erect, build, or set up upon the said premises so to be demised or leased as last mentioned, or any part or parts thereof, any houses, cottages, or other buildings, which it may be deemed necessary or expedient to erect or build thereon, for the better carrying on the cultivation and improvement of such lands respectively, and for the habitation and accommodation of the respective lessees thereof, or their undertenants, workmen, servants, or agents, (so that in every such last mentioned lease all mines, minerals, and quarries in or under the lands to be thereby respectively demised (except as before mentioned) and full powers for working, raising, and carrying away the same, be expressly excepted and reserved; and so that upon every such last mentioned lease, there be reserved and made payable during the continuance thereof, the best yearly rent or rents, reservation or reservations, which, under the circumstances of the case, can be reasonably had or gotten for the same, without taking any fine, premium, or foregift in respect thereof, and so that in every such last mentioned lease there be retained a consideration or power of re-entry for non payment of the rent or rents, reservation or reservations, to be thereby reserved; and so as the lessee or lessees to whom every or any such lease shall be made, duly execute a counterpart thereof, and thereby enter into such covenants and agreements for the tilling, manuring, cultivating, planting, improving, and enclosing the lands to be comprised in such lease, and for the building, repairing, and keeping in repair the houses, cottages, and buildings thereon, or to be erected thereon as aforesaid, and for preserving the boundaries and limits of the same lands respectively, *And also* (if it shall be thought necessary or proper)

and power to build;

but all mines, and powers of working them, to be reserved.

said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so

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to enter into any covenant or covenants for the renewal or renewals of any such last mentioned lease, either perpetually or for a limited time, by the person for the time being seised of or entitled to the said messuages or tenements, lands, hereditaments, and premises, comprised in such lease, by adding a new life or lives in the place or stead of any *cestui que vie*, or *cestuis que vie* who shall die, at or under the yearly rent or rents reserved upon the preceding lease, and upon payment on each renewal, of two years improved value of the premises of which the lease shall be so renewed, as or by way of fine, or upon the reservation of such additional rent as shall be equivalent to such improved value, and in lieu thereof, so that there be not more than three lives in being, at most, upon any part of the said premises so to be leased and demised at any one time, and to grant any lease or leases, in pursuance of such covenant or covenants for renewal."

Power to gentleman, and for persons entitled to the rents, and for guardians during minority, to grant mining leases.

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that it shall and may be lawful to and for the said [*gentleman*], and after his decease, for the person who by virtue of, or under the limitations hereinbefore contained, shall for the time being be entitled to the actual possession or receipt of the rents and profits of the said messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, in case such person shall be of full age; but if not, then to and for the guardian or guardians for the time being of such person, during his minority, to grant, demise, and lease all and every or any of the mines, veins, and seams of iron, ironstone and coal, and other mines of minerals and quarries, which are or have been opened, found, or discovered, or which shall or may, at any time or times hereafter be opened, found, or discovered, in, under, or upon any of the same messuages or tenements, lands, hereditaments and premises, together with any part or parts of the same lands and hereditaments, which it may be thought expedient to demise and lease with such mines and

OF FREEHOLDS, ON MARRIAGE.

to be, with their appurtenances, (*i*) to any person or persons, for any term or number of years absolute not

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quarries, for the better and more effectually working the same, unto any person or persons, for any term or number of years, not exceeding sixty-one years, to take effect in possession, and not in reversion, or by way of future interest, together with full and free liberty, power, and authority to search for, dig for, take, use, and dispose of all such iron, ironstone, coals, and other metals and minerals whatsoever, as shall be found in the same mines, veins, seams and quarries, and to sink, win, work, and make grooves, shafts, drifts, trenches, sluices, way-gates, water-gates, and water courses, and to erect any furnace or furnaces, fire or other engines, mills or gins, and to use all other lawful ways and means whatsoever, as well for the finding, discovering, winning, working, and getting of iron, ironstone, coals, and other metals and minerals forth and out of the said mines and quarries, as for avoiding and carrying away water, foul air or stench from, forth, and out of the same; and also full and free liberty, power, and authority to take and use sufficient ground-room, heap-room, and pit-room, for laying, placing, and manufacturing the iron, ironstone, coals, earth, and rubbish, that shall from time to time proceed from, or be wrought, dug, or gotten out of the said mines and quarries; and also full and sufficient ways, paths, and passages to and for the respective lessees, to be named in such demises or leases, and their agents, workmen and servants, from time to time, during the continuance of such leases respectively, to take and carry away with horses, carts, wains, waggons, and other carriages, all the iron, ironstone, coals, metals and minerals, which shall from time to time be wrought, won, or gotten in, from, and

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Powers to lease.

(*i*) It often happens that the parties are desirous that the mansion or dwelling-house should not be leased; in which case insert the following words:

"excepting the capital messuage or mansion-house, situate at , and called ."

exceeding twenty-one years, to take effect in possession, and not in reversion, or by way of future interest, so as there be reserved in every such limitation or appointment, by way of demise, or lease, payable during the estate, or use created thereby, the best or most improved yearly rent or rents, to be incident to the immediate reversion of the hereditaments so to be limited or appointed, by way of demise or lease, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or fore-gift, or any thing in the nature of a fine, premium, or fore-gift, for the making thereof, so that there be therein respectively contained a clause in the nature of a condition for re-entry on non-payment of the rent or rents thereby to be respectively reserved; and so that the person or persons named therein as lessee or lessees, do execute a counterpart or counterparts thereof respectively; *And* do thereby covenant for the due payment of the rent or rents thereby to be respectively reserved, and be not by any clause, or words, to be therein contained, made dis-

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out of the said mines and quarries, thereby to be demised or leased, and also full and free liberty, power, and authority to erect, build, and set up in any convenient place or places near any of the said mines or quarries, so to be demised or leased, all such houses, hovels, lodges, sheds, or other buildings, as shall from time to time be needful or convenient for the standing, laying, and placing any workmen, horses, utensils, or materials to be employed or used in or about the working of the said mines and quarries respectively, and to dig or get up stone, peat, or clay for erecting, building, and repairing such houses and other buildings, and to do whatsoever else shall be deemed needful or requisite in or about, or for the winning, working, digging for, obtaining, washing, cleansing, and smelting of iron, ironstone, coals, metals and minerals from and out of the said mines or quarries, and for the manufacturing, taking, and carrying away the same, so that upon every such lease there be reserved and made payable, during the continuance thereof, the best and most improved yearly rent or rents, tolls, duties and reservations that can, under

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punishable for waste, or exempted from punishment, for committing waste, any thing hereinbefore contained to the contrary thereof notwithstanding: PROVIDED ALSO, *and it is hereby agreed and declared* between and by the parties to these presents, that it shall and may be lawful to and for the said [*gentleman*], during his life, and after his decease, for the said [*first trustees*], and the survivor of them, and the executors and administrators of such survivor, during the minority of the said child or children, who by virtue of any of the limitations aforesaid, shall be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said lands, hereditaments, and premises hereby granted and released, or intended so to be, with their appurtenances, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them respectively, in the presence of, and attested by two or more credible witnesses, and either referring or not referring to this present power, to limit or appoint, by way of demise or lease, all or any part or parts

Power to gentleman, and, after his decease, to trustees, to let building leases for ninety-nine years.

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the circumstances of the case, be reasonably had or gotten for the same, without taking any fine, premium, or foregift for the making thereof, and so that in every such lease there be contained a power of re-entry for the nonpayment of the rent or rents, tolls, duties, or reservations to be thereby respectively reserved, at such time or times after the same shall become due, as shall be thought proper or deemed advisable; and so that the respective lessees to be named in such leases, duly execute counterparts thereof respectively, and enter into such covenants and agreements for the due and punctual rendering and paying the rent or rents, tolls, duties, and reservations to be thereby respectively reserved, and for the working and managing of the said mines and works, and for the building, repairing, and keeping in repair the houses, cottages, and other buildings, to be mentioned in such leases respectively, as shall be deemed necessary, or as shall be thought proper and reasonable."

References to other powers.

For powers of partition and enfranchisement, see the next precedent; and for powers to lease copyholds with license of the lord, see *post*, *Settlement of Copyholds.*

of the said lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, to any person or persons who shall be willing to improve the same, and shall covenant and agree to improve the same, by erecting or building thereon any new house or houses, erections or buildings, or to rebuild or repair any of the messuages, tenements, erections or buildings whatsoever, which now are or hereafter shall be on the same hereditaments, or any part or parts thereof, or to expend such sum or sums of money in the improvement thereof respectively, as shall be thought adequate to the interest therein respectively to be departed with for any term or number of years, not exceeding ninety-nine years, to take effect either in possession, or on the determination of the subsisting leases for the time being of the same hereditaments, so that in every such limitation or appointment, by way of demise or lease, there shall be reserved the best or most improved yearly rent or rents, to be payable during the use or estate, uses or estates to be created thereby, to be incident to the immediate reversion of the hereditaments so to be limited or appointed, by way of demise or lease as aforesaid, that can be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or any thing in the nature of a fine, premium, or foregift, for the making thereof; *And* so that no such limitation or appointment, by way of demise or lease as aforesaid, shall be valid in law, unless there be inserted a clause in the nature of a condition for re-entry, in case the rent shall remain unpaid, for any space not exceeding thirty days. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, That it shall and may be lawful to and for the said [*first trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, at any time or times hereafter, at the request and by the direction and appointment of the said [*gentleman*], (*i*) during

Power to the first trustees, with the consent of gentleman, to sell and exchange the hereditaments,

(*i*) The power of sale and exchange above given is to be exercised in the life time of the gentleman. No doubt therefore can exist as to its validity. But it is very frequent in practice to extend this power to the trustees during the lives of the unborn children of the marriage, to be

Validity of powers of sale and exchange.

OF FREEHOLDS, ON MARRIAGE.

his life, (*k*) (testified by some writing under his hand and seal, attested by two or more credible witnesses) to dispose of and convey, either by way of absolute sale, or in exchange for or in lieu of other lands, tenements, and hereditaments, to be situate somewhere in that part of Great Britain called England, or in the principality of Wales, all or any part of the lands, tenements, or hereditaments hereby granted and released, or intended so to be, and the inheritance thereof in fee simple, to any person or persons whomsoever, for such price or prices in money, or for such equivalent or recompense in lands and hereditaments, as to them the said [*first trustees*], or the survivor of them, or the executors or administrators of such survivor, shall seem reasonable; *And* that for the purpose of effecting such dispositions or conveyances, (but not for any other purpose) it shall and may be lawful to and for the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, at such request, and by such direction as aforesaid, by any deed or deeds, instrument or instruments in writing, sealed and delivered by them or him, in the presence of, and attested by two or more credible witnesses, absolutely to revoke, determine, and make void, all and every or any of the uses, trusts, powers, and provisoes hereinbefore limited, declared, and expressed, of and concerning the hereditaments so to be sold and exchanged: *And* by the same or any other deed or deeds, instrument or instruments in writing,

and for that purpose to revoke the uses declared of the hereditaments to be sold or exchanged.

and by the same deed to limit such new uses as may be necessary,

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exercised with their consent, if of age; and during minority, with that of their guardians. See the next precedent. Some doubt has been entertained of the validity of such a power, since the case of *Ware* v. *Polhill*, 11 Ves. jun. 257, as tending to a perpetuity. But when it is considered that this power is always given after the limitation of an estate tail, and that it can therefore be defeated at any time by a recovery, the doubt seems to be without foundation. See Sug. Pow. 148, 4th edit.

Wife taking life estate.

(*k*) Where the lady takes a life estate, say "during the joint lives, and after the death of either of them, then at the request and by the direction of the survivor of them, testified by some writing under their, his, or her hands and seals, or hand and seal, attested," &c.

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to limit, declare, direct, or appoint, any use or uses, trust or trusts, estate or estates, of the said hereditaments, or any part or parts thereof, the uses of which shall be so revoked, which it shall be thought necessary or expedient to limit, declare, direct or appoint, in order to effectuate such dispositions and conveyances as aforesaid; *And* also that upon any such exchange as aforesaid, it shall and may be lawful to and for the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, to give or receive any sum or sums of money, by way of equality of exchange; *And* also that upon payment of all the money to arise by sale of the said hereditaments, or any part thereof, or so to be received for equality of exchange, it shall and may be lawful to and for the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, to sign and give receipts for the money for which the same shall be so sold, or so to be received by them or him for equality of exchange as aforesaid; *And* that such receipts shall be sufficient discharges to the person or persons paying the same respectively, for the money for which the same shall be so given, or for so much thereof as in such receipts shall be therein acknowledged or expressed to be received; *And* that the person or persons paying the same respectively, and taking such receipt or receipts for the same respectively as aforesaid, shall not afterwards be answerable or accountable for the loss, misapplication, non-application, or be in anywise obliged to see to the application thereof, or of any part thereof respectively (*l*). And it is hereby also agreed and declared, that when all or any of the lands, tenements, and hereditaments, hereby released, shall be so sold for a valuable consideration in money, or any money shall be received for equality of ex-

and with power to give or receive any money by way of equality of exchange,

and to give valid receipts for that purpose.

Declaration, that trustees

(*l*) A clause is sometimes introduced in this place, declaring that upon sale or exchange, the estates so sold or exchanged shall be discharged of the uses of the settlement, and that the releasees shall stand seised to the use of the purchaser; but this is quite unnecessary, if not improper. See 1 San. Us. 421.

Power of sale and exchange.

OF FREEHOLDS, ON MARRIAGE.

shall apply the monies to be received in the discharge of the incumbrances affecting the hereditaments, and lay out the surplus thereof in other hereditaments,

change, under the powers hereinbefore contained, they the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, shall, with all convenient speed, pay and apply the money to arise by such sale or sales, or to be received for equality of exchange, in or towards satisfaction or discharge of the principal sum of money (if any) which shall then under and by virtue of these presents, have been charged upon, or affect the said messuages or tenements, hereditaments and premises hereby granted and released, or intended so to be, and lay out and invest the surplus (if any) of such money, in the purchase of other hereditaments in fee simple in possession, to be situate somewhere in that part of Great Britain called England, or in the principality of Wales, of a clear indefeasible estate of inheritance, or of lands of freehold or copyhold tenure, to be held therewith, or with the hereditaments hereinbefore settled, or so to be purchased or received in exchange, as aforesaid, yet so that during (*m*), the life of the said [*gentleman*], such purchase or purchases respectively be made with his consent, testified by some writing under his hand; and after the decease of the survivor of them, then with the consent in writing, of the person or persons who would, under or by virtue of the limitations hereinbefore contained, be for the time being in the actual possession, or entitled to the rents and profits of the lands, hereditaments, and premises, so to be purchased, in case the same were then actually purchased and settled, if such person or persons respectively be of full age; but if such person or persons respectively, shall be under age, then at the discretion and of the proper authority of the said [*first trustees*], or the survivor of them, or the executors or administrators of

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Wife taking an estate for life.

(*m*) If the lady take an estate for life, say,

"the joint lives of the said [*gentleman*] and [*lady*], such purchase or purchases respectively be made with their joint consent, testified by some writing under both their hands; and after the decease of either of them, with the consent of the survivor, testified by some writing under his or her hand;"

such survivor; *And* moreover that they the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, *Do* and shall settle and assure, or cause to be settled and assured, as well the lands and hereditaments to be purchased, as the lands and hereditaments to be received by way of exchange, as hereinbefore is mentioned, to such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, and with, under, and subject to such and the same powers, provisoes, declarations and agreements, as are in and by these presents limited, expressed, declared, and contained, of and concerning such of the hereditaments hereinbefore mentioned, as should be so sold or exchanged, or as near thereto as the death of parties and other intervening accidents, will then admit of, yet so that if any of the lands so to be purchased, shall be held by lease or leases for years, the same shall not vest absolutely in any child or children of any person thereby made tenant for life, who shall not attain the age of twenty-one years; And it is hereby agreed and declared between and by the parties to these presents, that if any of the lands so to be purchased as aforesaid, shall be held for leases for lives or for years, proper provisions shall be inserted in the settlement so to be made thereof as aforesaid, for renewing the same from time to time as occasion shall require, and that the fines, fees, and expenses of renewal or renewals, shall from time to time be defrayed by and out of the rents, issues, and profits of the premises so to be purchased, and of which such renewals are to be made respectively; And it is hereby agreed and declared between and by the parties to these presents, that until the money to arise by any sale or sales of the hereditaments hereby made saleable, or to be made for equality of exchange, as hereinbefore expressed, shall be disposed of in the manner hereinbefore mentioned, it shall and may be lawful to and for the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, by and with such consent and approbation as last hereinbefore is mentioned, or at their or his discretion, as the case may be, to lay out and invest the said sum and sums of money, in their or his names or name, in the purchase of a

and settle the same, and the lands to be purchased or received in exchange, to the uses hereinbefore declared;

but so that no leaseholds shall vest until persons attain twenty-one;

and that proper provisions shall be inserted for the renewal of the leaseholds for lives or years.

Declaration, that until the monies shall be so disposed of, they shall be invested.

OF FREEHOLDS, ON MARRIAGE.

competent share or shares of the parliamentary stocks and public funds of Great Britain, or at interest on Government or real securities in England; *And* to alter, vary, and transfer the said stocks, funds, and securities of a like nature, as occasion shall require; AND it is hereby also agreed and declared, that the said interest, dividends, and annual produce arising from the said stocks, funds, and securities, shall be paid and applied to the person or persons, in the manner and for the intents and purposes to or for which the rents, issues, and profits of the said lands and hereditaments to be purchased therewith, would be payable or applicable, in case such purchase as aforesaid were actually made. PROVIDED ALWAYS(*n*), and it is hereby agreed and declared between and by the parties to these presents, that it shall and may

and vary the securities,

and pay the interest to the persons who would be entitled to the rents.

Power to gentleman to jointure any after-taken wife;

Placing of powers.

(*n*) The power of jointuring a second wife, and charging with portions, are often placed *before* the proviso of sale and exchange. But as this power is overreached by the powers of sale and exchange, it would seem more correct to insert them as above. The power of leasing takes precedence of the power of sale and exchange; and the power of sale and exchange will overreach every other power, although subsequently exercised in point of time. But a clause to this effect, although sometimes inserted, is not necessary. See 1 Sand. Us. 165, where the subject of priority of power is discussed; and see also Sug. Pow. 346, 4th edit.

The following additional power immediately after the present one is also sometimes inserted.

Power to gentleman, besides the jointure under first power.

"PROVIDED ALWAYS, and it is hereby also declared and agreed between and by the parties to these presents, that besides, and over and above the annual sum or annual sums, or yearly rent charge or yearly rent charges, to be appointed by the said [*gentleman*], by virtue and in exercise of the power and authority hereinbefore for that purpose contained, it shall and may be lawful to and for the said [*gentleman*], by any deed or deeds, instrument or instruments, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and attested by

be lawful to and for the said [*gentleman*], from time to time, or at any time hereafter, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto in writing, to be by him signed

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three or more credible witnesses, to limit or appoint to, or to the use of, or in trust for any woman or women, whom he should or might marry, for her or their life or respective lives, or for her or their jointure or respective jointures, any annual sum or annual sums of money, yearly rent charge or rent charges, not exceeding the yearly sum of fifty pounds for every thousand pounds, or the value thereof, either in land or money, which he the said [*gentleman*], his executors or administrators, shall receive or be entitled to with any such woman or women respectively; AND it is hereby agreed and declared, that if the sum or sums of one thousand pounds, or the value thereof respectively, to which such woman or women respectively, shall at the time of making such last mentioned appointment or appointments as aforesaid be entitled, shall consist of continuing expectancies, or particular estates or interests, either in land or money, it shall and may be lawful to and for the said [*gentleman*] to have the same respectively estimated or valued, and to limit or appoint such annual sum or sums of money as aforesaid, in respect of such estimated sum or value; AND it is hereby agreed and declared, that the annual sum or annual sums, or yearly rent charge or yearly rent charges, to be appointed after the rate of fifty pounds per annum, as hereinbefore is mentioned, shall not exceed in the whole the said yearly sum of five hundred pounds for any one woman; *And* that such annual sum or sums, yearly rent charge or rent charges, shall be issuing and payable out of, and charged and chargeable upon, all or any part of the said messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, *And* to be paid in such manner as to the said [*gentleman*] shall seem meet,

to appoint to lady 50*l.* for every 1000*l.*

Declaration, that if the property of the lady is contingent, it shall be valued, and a sum appointed accordingly.

The jointure not to exceed 500*l.*

and the sum shall be charged on the hereditaments;

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and published in the presence of, and attested by two or more credible witnesses, to limit or appoint to any woman or women respectively, whom he the said [*gentleman*] shall or may marry, for her or their life or lives, and for her or their jointure or respective jointures, and in bar, or without being in bar of her or their dower or dowers, any annual sum or sums of money, yearly rent charge, or yearly rent

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and that the same shall be secured by usual powers;

And that for the purpose of securing the said annual sum or sums, or yearly rent charges, so to be appointed as last hereinbefore mentioned, it shall and may be lawful to and for the said [*gentleman*], by any deed or deeds, instrument or instruments in writing, to be sealed and delivered, or by last will and testament, or codicil or codicils, to be signed and published as aforesaid, to limit and appoint to any woman or women respectively, to whom the last mentioned annual sum or sums, or yearly rent charge or yearly rent charges, shall be so appointed as aforesaid, usual powers and remedies for recovering and enforcing the payment thereof respectively by distress and entry upon, and perception of the rents, issues, and profits of the hereditaments, so to be charged with the last mentioned annual sum, or annual sums, yearly rent charge or yearly rent charges; *And* also to limit and appoint the hereditaments so to be charged, as last hereinbefore is mentioned, to any person or persons, for any term or terms of years, as to the said [*gentleman*] shall seem meet, so that every such last mentioned term or terms of years, if any such shall be created, shall be made to determine on the death of the woman or women, for the benefit of whom the same shall be created, and the payment of the arrears of her or their rent charge, or respective rent charges, and the expenses incurred by the nonpayment thereof respectively; and that such limitation or limitations, appointment or appointments, to be made in exercise of the present power, be respectively made, either before or after the marriage or respective marriages of the said [*gentleman*], as to him the said [*gentleman*] shall seem meet."

and by a term of years.

As to the fraudulent execution of a power of this nature, see 2 Byth. 496.

charges, not exceeding in the whole the yearly sum of pounds of lawful money of Great Britain and Ireland, to be issuing and payable out of, and charged and chargeable on all or any part of the said messuages or tenements, lands, hereditaments and premises, hereinbefore granted and released, or intended so to be, with their appurtenances, clear of all parliamentary taxes and outgoings whatsoever, and to be paid in such manner as to the said [*gentleman*] shall seem meet; *And* for the purpose of securing the annual sum, or yearly rent charge, or annual sums or yearly rent charges, so to be appointed as aforesaid, to limit and appoint to any woman or women respectively, to whom the said annual sum or yearly rent-charge, or annual sums or yearly rent charges, shall be so appointed as aforesaid, usual powers and remedies for recovering and enforcing payment thereof, by distress and entry upon, and perception of the rents, issues, and profits of the hereditaments, so to be charged with the said annual sum or sums, yearly rent charge or rent charges; *And* also to limit and appoint the hereditaments, so to be charged as aforesaid, to any person or persons whomsoever, for any term or terms of years, as to him the said [*gentleman*] shall seem meet, as a further security for the payment of the said annual sum or annual sums, or yearly rent-charge or yearly rent-charges; but so that every such term or terms of years, if any such shall be limited, be made to determine on the death of the said woman or women, for the benefit of whom the same shall be created, and the payment of the arrears of her or their rent-charge, or respective rent-charges, and the expenses incurred by the nonpayment thereof, and that such limitation or limitations, appointment or appointments respectively, shall be made, either before or after the marriage or respective marriages of the said [*gentleman*], as to him the said [*gentleman*] shall seem meet. PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*gentleman*], by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testa-

with usual powers, and limitation of a term for securing the same.

Power to gentleman to charge hereditaments with portions for the children of any future marriage.

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ment in writing, or by any codicil or codicils thereto, to be by him signed and published in the presence of, and attested by three or more credible witnesses, to subject and charge all or any part of the said messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, with their appurtenances, to and with the payment of any sum or sums of money, for the portion or portions of the child or children of him the said [*gentleman*], by any woman or women with whom he may intermarry (other than and besides an eldest or only son for the time being entitled to the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, for any estate in tail male in possession, or in remainder expectant on the decease of the said [*gentleman*]) not exceeding in the whole, the sums of money hereinafter mentioned (that is to say); if but one such child, the sum of pounds of lawful money of Great Britain and Ireland, for his or her portion; if two such children and no more, then the sum of pounds of like lawful money for the portion of such two children, or either of them; and if three or more such children, then the sum of pounds of like lawful money, for the portion of the said three or more children, or any of them, and with interest for the same sums of money respectively, at any rate not exceeding five pounds for every one hundred pounds by the year, the said sums of pounds, pounds, and pounds, as the case shall happen, to be an interest vested or interests vested in, and to be paid to, or shared, or divided between or among such child or children respectively, at such age or respective ages, days or times, and if more than one, in such parts, shares, and proportions, and with such annual sum or sums of money, conditions, limitations, and restrictions over (such annual sum or sums of money, conditions, and restrictions over, being for the benefit of one or more such child or children respectively, as the said [*gentleman*] shall think proper, and shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of, and attested by two or more credible witnesses, or by his last will and testament in

If one child, the sum of —*l.*;

if two children, the sum of —*l.*;

and if three or more children, the sum of —*l.*;

writing, or any codicil or codicils thereto, to be by him signed and published in the presence of, and attested by three or more credible witnesses, direct or appoint; *And* that for the purpose of raising any portion or portions, and interest for the same, it shall be lawful to and for the said [*gentleman*], by the same or any other deed or deeds, instrument or instruments in writing, so sealed, delivered, and attested as aforesaid, or by such last will and testament in writing, or any codicil or codicils thereto, so signed, published, and attested as aforesaid, to limit or appoint all or any part of the hereditaments so to be charged as last hereinbefore mentioned, with their appurtenances, to any person or persons whomsoever, for any term or terms of years whatsoever, without impeachment of waste, *Upon trust* to raise the money so to be charged by way of mortgage, so that the estate or estates so to be limited and appointed be made to cease, or be made redeemable, on full payment of the sum or sums of money so to be charged, and the interest thereof, by the person or persons who for the time being shall be entitled to the freehold and inheritance of the premises so to be limited and appointed (*o*): PROVIDED ALWAYS, and it is hereby further

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with power to limit a term for securing the same.

Proviso that the receipts of the

(*o*) It frequently happens that a tenant for life of an estate in strict settlement, with the ultimate remainder to himself in fee, with the power of leasing, jointuring, charging portions, sale, and exchange, &c., acquires the fee by failure of the limitations immediate between his life estate and remainder: and it may be questioned, whether all these powers continue after the accession of the fee. Perhaps the better better opinion is, that the powers cannot be exercised after the union of the estates, on the ground, not that the powers are merged, but that according to the true construction of the settlement, they were not to endure beyond the continuance of the limitations, which they were intended to over reach. This would not affect any prior exercise of the power, although by will, as of course, where the power has been executed by deed, the accession of the fee will not invalidate the execution. Sug. Pow. 91. 4th edit. citing *Mortlock* v. *Buller*, 10 Ves. jun. 292; *Trover* v. *Knightley*, 6 Mad. 134; *Wheate* v. *Hall*, 17 Ves. 80.

If tenant for life acquires the fee, the powers cease.

It may here be mentioned, that it seems wholly immaterial in what part of the deed the powers are inserted, whether before or after the limitations of the estates. *Rex* v. *Inhabitants of Ealington*, 4 T. R, 177.

Immaterial where powers are inserted.

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trustees shall be sufficient discharges.

declared and agreed between and by the parties to these presents, that the receipt or receipts of the said trustees or trustee for the time being, for any money payable to them or him by virtue of these presents, shall effectually discharge the person or persons paying the same from being answerable or accountable for the misapplication or non-application thereof, or from being obliged to see to the application thereof, or to enquire into the necessity or propriety of any sale or mortgage that may be made or accepted by virtue of these presents: PROVIDED ALWAYS,

Power to gentleman and to trustees to appoint new trustees;

and it is hereby agreed and declared between and by the parties to these presents, that if the said trustees hereby appointed, or to be appointed as hereinafter is mentioned, or any of them, or their, or any of their heirs, executors, administrators, or assigns, shall happen to die, or be desirous of being discharged of and from, or refuse, or decline, or become incapable to act in the trusts hereby in them respectively reposed as aforesaid, before the said trusts shall be fully executed, performed, or discharged, then and in such case, and when and so often as the same shall happen, it shall and may be lawful to and for the said [*gentleman*], and after his decease, to and for the then surviving and continuing trustee or trustees, or the executors or administrators of the last surviving and continuing trustee, by any deed or deeds, instrument or instruments in writing, to be by them or him sealed and delivered in the presence of, and attested by two or more credible witnesses, from time to time, to nominate, substitute, or appoint any other person or persons, to be a trustee or trustees, in the stead and place of the trustee or trustees so dying, or desirous to be discharged, or refusing, or declining, or becoming incapable to act as aforesaid; *And* when and so often as any such trustee shall be nominated and appointed as aforesaid, all the trust estates, monies, and premises which shall be vested in the trustee or trustees who shall so die, or be desirous to be discharged, or refuse or decline, or become incapable to act as aforesaid, shall be thereupon, with all convenient speed, conveyed, assured, and transferred, in such sort and manner, and so as that the same shall and may be legally and effectually vested in the surviving or continuing trustee or trustees of

and when new trustees are appointed, trust estates shall be conveyed to them.

the same trust estates, monies, and premises respectively, and such new and other trustee or trustees, or if there shall be no continuing trustee or trustees of the same estates, monies, and premises, then in such new trustees only, *To the uses*, upon and for the trusts, intents, and purposes hereinafter declared and contained of and concerning the said trust estates, monies, and premises, or such of them as shall be then subsisting, undetermined, and capable of taking effect; *And* the person or persons so to be appointed as aforesaid, shall have all the powers of the trustee or trustees in whose room he or they shall be substituted. PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that the several trustees hereby appointed as aforesaid, and such and any of them, and the heirs, executors, administrators, and assigns of them, and each and every of them, shall be charged and chargeable respectively, only for such monies as they shall actually receive by virtue of the trusts hereby in them reposed, notwithstanding their or any of their signing or joining in giving, or signing any receipt or receipts for the sake of conformity; and any one or more of them shall not be answerable or accountable for the other or others of them, or for involuntary losses, and also that it shall and may be lawful for them, with and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to retain and reimburse themselves respectively, and also to allow their co-trustee or co-trustees all costs, damages, and expenses, which they or any of them shall or may suffer, sustain, expend, disburse, be at, or be put unto, in, or about the execution of the aforesaid trusts, or in relation thereunto. AND the said [*gentleman*], (*p*) doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*first trustees*], their heirs and assigns, in manner following (that is to say), that for and notwithstanding any act, deed, matter or

Covenant by gentleman with first trustees, that he is seised in fee,

(*p*) The observations as to covenants for title, made *ante*, Vol. VI. p. 257—262, equally apply to covenants for title in settlements. They are sometimes inserted *before* the trustee clauses.

Covenants for title.

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thing whatsoever, by him the said [*gentleman*] made, done, omitted, committed, executed, or knowingly or willingly permitted or suffered to the contrary, he the said [*gentleman*], at the time of the sealing and delivery of these presents, is lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to, the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or intended so to be, and every part thereof, with their appurtenances, for a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple, without any manner of condition, use, trust, property, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other instrument, cause, matter, or thing whatsoever, to alter, charge, defeat, incumber, revoke, or make void the same; *And* that for and notwithstanding any such act, deed, matter or thing as aforesaid, he the said [*gentleman*], hath now in himself good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, and convey the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, with their appurtenances, unto the said [*first trustees*], their heirs and assigns, to the uses and in the manner aforesaid, according to the true intent and meaning of these presents; *And* that the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or intended so to be, shall and may from time to time, and at all times hereafter, remain, continue, and be, *To the uses*, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore expressed and contained of and concerning the same; *And* be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, received and taken accordingly, without the lawful let, suit, trouble, eviction, interruption, claim, or demand whatsoever, of or by him the said [*gentleman*], or his heirs, or of or by any other person or persons lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him, them, or any of them; *And* that free and clear, and freely and clearly and absolutely acquitted,

and that he has good right to convey;

and for quiet enjoyment,

free from incumbrances;

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exonerated, released, and for ever discharged, or otherwise by the said [*gentleman*], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights and title of dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges, debts and incumbrances whatsoever, either already had, made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered, by the said [*gentleman*] or his heirs, or by any other person or persons lawfully or equitably claiming or to claim, by, from or under, or in trust for him, them, or any of them; *And further*, that he the said [*gentleman*], and his heirs, and all and every other person and persons having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof, by, from or under, or in trust for him the said [*gentleman*] or his heirs, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose by the said [*first trustees*], or some or one of them, but at the proper costs and charges in the law of the said [*gentleman*], his heirs, executors, or administrators, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring of the said messuages or tenements, lands, hereditaments, and premises

and for further assurance.

OF FREEHOLDS, ON MARRIAGE.

hereby granted and released, or intended so to be, and every part thereof, with their appurtenances, unto the said [*first trustees*], their heirs and assigns, to the uses and in the manner aforesaid, as by the said [*first trustees*], their heirs and assigns, or any of them, or their or any of their counsel in the law, shall be reasonably advised, devised, or required, so as no such further assurance or assurances contain or imply any further or other warranty, than against the person or persons who shall be required to make and execute the same, and his, her, or their heirs, executors, and administrators' acts and deeds; and so as the party or parties who shall be required to make and execute such further assurance or assurances be not compelled nor compellable, for the making or doing thereof, to go or travel from his or her usual place or places of abode. IN WITNESS, &c.

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN, AND GENTLEMAN.

MARRIAGE SETTLEMENT *of a Manor, Messuages, Tithes, and Hereditaments, reciting the Marriage Settlement of the Father, under which he is Tenant for Life, and the Gentleman Tenant in Tail; the barring the Entail, and the Limitation of the Property to such Uses as Father and Gentleman should appoint; and in default of Appointment, to the Use of Father for Life, and to the Gentleman in Fee;* APPOINTMENT AND RELEASE *by Father and Son until Marriage, to the subsisting Uses, and after the Marriage, to the Use that* GENTLEMAN *may receive a* RENT-CHARGE *during the joint Lives of Himself and Father; Similar Use to* LADY, *if Gentleman die in the Lifetime of Father, with Powers for enforcing the Payment thereof respectively; Remainder to the Use of Second Trustee for Five Hundred Years, upon the Trusts hereinafter mentioned; Remainder to the Use of Father of Gentleman and Gentleman for Life; Remainder to the Use that Lady may receive a Jointure Rent if she shall survive Gentleman; Remainder to Trustees for One Thousand Years; Remainder to the Use of the Father, in Tail Male; Remainder to the Use of Children by the present or any future Marriage,* IN STRICT SETTLEMENT; *the latter Limitations preceded by a General Power of Appointment to Father and Son; Remainder to the Brothers of Gentleman, and their Issue,* IN STRICT SETTLEMENT; *Remainders over;* TRUSTS *of Term of Five Hundred Years, to secure the Payment of the Three Rent-Charges, and Provision for Cesser;* TRUSTS *of Term of One Thousand Years for raising a particular Sum for*

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN AND GENTLEMAN.

Portions for younger Children; (*a*) PROVISIONS *for Survivorship; if no Son, additional Sums to be raised for Daughters; for Maintenance and Advancement; Provision as to Advancement by Gentleman in his Life-time; Provision for the Rent being received by Reversioner, and for Cesser of Term;* POWERS *to Gentleman to charge Premises with Jointure, and to portion future Wife and Children, and to charge further Sum for Portions for the Children of the present Marriage; Powers for Brothers of Gentleman to Jointure, and to charge with Portions; Proviso limiting Amount of Jointures; Powers to Lease for Twenty-one Years, and of Partition, Sale, and Exchange;* POWERS *to change; Trustees, and Provisions for their Indemnity and Reimbursement; Covenants for Title by Father and Gentleman, with* VARIATIONS *for the Introduction of* SHIFTING CLAUSES *and* SPECIAL POWERS.

Parties.

THIS INDENTURE, made the day of 18 , between [*father of gentleman*] of, &c. of the first part; [*gentleman*] of, &c. eldest son of the said [*father of gentleman*], of the second part; [*father of lady*] of, &c. of the third part; [*lady*] of, &c. of the fourth part; [*first trustees*] of, &c. of the fifth part; [*second trustees*] of, &c. of the sixth part; [*third trustees*] of, &c. of the seventh part: WHEREAS by indentures of lease and release, bearing date respectively the twenty-second and twenty-third day of, &c. the release being made, or expressed to be made, between the said [*father of gentleman*] and [A.] his wife, of the first part; [T. B.] and [W. P.] of the second part; [H. B.] and [T. G.] of the third part; [R. D.] and [J. D.] of the fourth part; the said [T. B.] and [W. P.] of the fifth part; and the said [W. P.] and [J. R.]

Recital of indentures of lease and release and settlement (in pursuance of articles),

(*a*) The provisoes and powers in this precedent are many of them the same in effect as in the last precedent, but they are all different in *form*, and the practitioner is thus presented with two complete sets of clauses, either of which he may adopt, at his own discretion.

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN AND GENTLEMAN.

of the sixth part, (being a settlement in pursuance of articles entered into previous to the marriage of the said [*father of gentleman*] and [A.] his wife,) the manors, messuages, tithes, and other hereditaments hereinafter mentioned and appointed, or intended so to be, with their rights, members, and appurtenances, were (amongst and together and with other hereditaments) conveyed by the descriptions therein expressed and contained, to the said [H. B.] and [T. G.] and their heirs, *To the uses*, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations therein expressed and contained, and hereafter in part recited, (that is to say); *To the use* of the said [R. D.] and [J. D.], their executors, administrators, and assigns, for the term of ninety-nine years, without impeachment of waste; *Upon* certain trusts for securing, during the joint lives of the said [*father of gentleman*], and [A.] his wife, the sum of pounds to her the said [A.] for her separate use, in the nature of pin-money; *And* from and after the expiration, or other sooner determination of the said term of ninety-nine years, and in the mean time subject to the same, and to the trusts thereof, *To the use* of the said [*father of gentleman*] and his assigns, for his life, without impeachment of waste, with a limitation *To the use* of the said [H. B.] and T. G.], and their heirs, during the life of the said [*father of gentleman*], *In trust* for him, and to preserve the contingent remainders thereinafter limited; *And* after his decease, *To the use* and intent that the said [A.], the wife of the said [*father of gentleman*] (in case she should survive him) and her assigns, should, during her life, receive an annual sum or yearly rent-charge of pounds, to be yearly issuing out of and charged upon all the said manors, messuages, tithes, and other hereditaments, and to be paid as therein mentioned, with the usual powers of distress and entry, and detention of possession, and perception of rents and profits for recovering and enforcing the payment of the said annual sum, or yearly rent-charge of pounds, in case the same should be in arrear; *And* subject to the said annual sum or yearly rent-charge, and the said powers and remedies for recovering and enforcing the payment thereof,

whereby certain hereditaments were conveyed

to the use of trustee for 99 years, to secure pin-money to wife;

remainder to to the use of father of gentleman for life; remainder to the use of trustees to preserve;

remainder to the use that gentleman's mother may receive a rent-charge;

remainder to to the use of trustees for 300 years,

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN AND GENTLEMAN.

for securing rent charge to wife, and portions to younger children;

To the use of the said [T. B.] and [W. P.], their executors, administrators, and assigns, for the term of three hundred years, to commence from the decease of the said [*father of gentleman*], without impeachment of waste, *Upon* certain trusts for securing to the said [A.] and her assigns, in case she should survive the said [*father of gentleman*] the due payment of the said annual sum, or yearly rent charge of pounds, and for raising for the daughters and younger sons of the said [*father of gentleman*], by the said [A.] his wife, the sums of money thereinafter mentioned, (that is to say); in case the said [*father of gentleman*] should have but one child by the said [A.] his wife, other than and besides an eldest or only son, the sum of pounds, for the portion of such one child; *And* in case the said [*father of gentleman*] should have more than one such child by the said [A.] his wife, the sum of pounds for the portions of such children, to be an interest or interests vested in and paid to such child or children; *And* if there should be more than one such child, to be divided between and among them in the shares, and with such provisions for their maintenance and advancement, as in the said indenture is mentioned; *And* from and after the expiration or sooner determination of the said term of three hundred years, and in the mean time subject thereto, and to the uses and trusts thereof, *To the use* of the first and every other son of the said [*father of gentleman*], by the said [A.] his wife, severally and successively, and according to their respective seniorities, in tail male, with divers remainders over; AND WHEREAS the said [*father of gentleman*] has issue by the said [A.] his wife, six children, (*viz.*) four sons; namely, the said [*gentleman*] their eldest son, [W. P.], [R. P.], and [C. P.], and two daughters, *viz.* [A. P.] and [C. P.] and no other child, and under the limitations contained in the hereinbefore recited indenture, the said [*gentleman*] became entitled to the said manors, and other hereditaments, subject to the uses of the said settlement, for an estate of inheritance in tail male in remainder expectant on the decease of the said [*father of gentleman*], his said father, and subject to and charged as hereinbefore is mentioned; AND WHEREAS the said [*gen-*

remainder to the use of the first and other sons in tail male.

That there were issue of the marriage, six children, of whom gentleman was the eldest son, whereby he is entitled to an estate tail in remainder.

tleman] attained his age of twenty-one years, on the day of : AND WHEREAS by four common recoveries suffered in his Majesty's Court of Common Pleas at Westminster, in Trinity Term last, and in which said common recoveries the said [*father of gentleman*] was vouched, and vouched over the said [*gentleman*]; *And* by an indenture (*b*) of bargain and sale, bearing date the day of and made or expressed to be made between the said [*father of gentleman*] of the first part, the said [*gentleman*] of the second part, [S. B.] of the third part, and [J. B.] of the fourth part, (being the deed making the tenant to the præcipe in and leading the uses of the said common recoveries, and enrolled in his Majesty's Court of Common Pleas at Westminster), the manors and other hereditaments, subject to the uses of the said settlement, were discharged from the said estate in tail male therein of the said [*gentleman*], and the remainders, limitations over, and reversion expectant or depending on the same; *And* so discharged, were conveyed, assured, and limited to such uses, upon such trusts, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, and declarations, as the said [*father of gentleman*] and [*gentleman*] in and by any deed or deeds, writing or writings, with or without power of revocation, to be by both of them sealed and delivered in the presence of and attested by two or more credible witnesses should, from time to time, jointly direct and appoint, and in default of such joint direction, limitation, or appointment, *To the use* of the said [*father of gentleman*] for the term of his life, with remainder *To the use* of the said [*gentleman*], his heirs and assigns for ever:

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN AND GENTLEMAN.

That by four recoveries, and deed leading the uses, the hereditaments were discharged from the estate tail of the gentleman and the remainders over, and were conveyed to such uses as father and son should appoint;

and in default of appointment, to father for life: remainder to son in fee.

(*b*) Where a recovery is to be suffered, to carry the arrangements of a marriage settlement into effect, the tenant to the *præcipe* is sometimes made in the same deed as the settlement; and the recovery, when suffered, is declared to enure to the uses agreed upon by the parties: but it is a much more convenient and proper course, to have two deeds, the one for making a tenant to the *præcipe*, and declaring that the recovery shall enure to such uses as father and son shall appoint, (see the proper form, *ante*, 101—106;) and the other, a marriage settlement, in the form of the above precedent.

Recovery deed should be a separate deed.

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That marriage hath been agreed upon between gentleman and lady; and agreement that gentleman and his father should settle the hereditaments.

AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said [*gentleman*] and the said [*lady*], with the privity, approbation, and consent of the said [*father of lady*], (testified by his being a party to and sealing and delivering these presents), *And* upon the treaty for the said marriage, it was agreed that the said [*gentleman*] and [*father of gentleman*] should settle the manors, messuages, lands, and other hereditaments hereinafter mentioned, and hereinafter respectively appointed and released, with the appurtenances, *To the uses* and in the manner hereinafter expressed concerning the same(*c*). NOW THEREFORE THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, *And* pursuant to and by force and virtue, and in exercise and execution of the power and authority to them for this purpose granted by the hereinbefore recited indenture of bargain and sale, and the said common recoveries suffered in pursuance thereof, and of all other powers and authorities in any wise enabling them in this behalf, THEY the said [*gentleman*] and [*father of gentleman*], *Do* by this deed or writing, by both of them sealed and delivered in the presence of the two persons, whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivering of these presents by them the said [*father of gentleman*] and [*gentleman*], absolutely, irrevocably, and jointly limit, direct, and appoint, that from and immediately after the sealing and delivering of these presents by the said [*father of gentleman*] and [*gentleman*], and for ever thenceforth, ALL THAT the manor, messuages or tenements, lands, tithes, and other hereditaments, hereinafter described and intended to be hereby granted and released, with their and every of their rights, members, and appurtenances, *And* the reversion, &c. *And* all the estate, &c. shall (but subject to the said terms of ninety-nine years and three hundred years, and the trusts thereof respectively, and of the jointure rent-charge of the said [A.], and the said powers and remedies for securing and enforcing the payment thereof) be and remain, *To the uses*, upon the

First witnessing part, whereby, in consideration of the marriage,

gentleman and his father, appoint that the hereditaments shall go,

subject to terms of years and rent charge, to the uses and in manner hereinafter mentioned.

Lady's fortune.

(*c*) If the lady have a fortune, and it be settled, the deeds settling it should here be recited. See *ante*, 401, 402.

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trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and contained of and concerning the same; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, *And* in consideration of the said intended marriage, *And* of the sum of ten shillings by the said [*first trustees*], to the said [*father*] and [*gentleman*] in hand, paid at or before the sealing and delivering of these presents (the receipt whereof is hereby acknowledged), THEY the said [*father*] and [*gentleman*] *Have*, and each of them *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Do*, and each of them *Doth* grant, bargain, sell, release, and confirm unto the said [*first trustees*], (in their actual possession now being by virtue of a bargain and sale to them thereof made by the said [*father*] and [*gentleman*], in consideration of five shillings, &c. &c.) and to their heirs, ALL, &c. (*parcels*) (*d*). *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said manor, messuages or tenements, lands, tithes, and other hereditaments, hereby appointed, granted and released, or intended so to be, with their rights, members, and appurtenances (but subject as aforesaid), unto the said [*first trustees*], and their heirs, *To the uses*, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements, hereinafter expressed, limited, declared, and contained of and concerning the same, (that is to say); until the said intended marriage shall be had and solemnized, to the uses now subsisting, or capable of taking effect, in the same hereditaments; *And* from and after the solemnization

Second testatum, whereby father and gentleman convey the hereditaments to the first trustees.

Habendum to the uses hereinafter contained: (that is to say)

until the marriage, to the subsisting uses, and after the marriage,

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(*d*) Tithes will pass under the general words, and need not be expressly mentioned; and where lands are discharged of tithes by a *modus*, the tithes should not be conveyed, but general words should be merely inserted; for otherwise the *modus* might be prejudiced by the tithes being conveyed as a separate inheritance.

How tithes should be conveyed, together with other premises.

If A. be tenant in tail of lands, and also tenant in tail of the tithes of these lands, and he levy a fine or suffer a recovery, the estate tail in the tithes will not be barred, unless they are properly described by their own names. 2 B. & P. 579. And see *ante*, 77.

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thereof, *To the use,* intent, and purpose that the said [*gentleman*] and his assigns, shall and may yearly, during the joint lives of him the said [*gentleman*] and [*father of gentleman*], have, receive, and take one annual sum, or yearly rent charge of pounds, of lawful money of Great Britain and Ireland, to be charged upon, and yearly payable out of the said manors and other hereditaments, with their appurtenances, and to be paid to the said [*gentleman*] and his assigns, at or in the common Dining Hall of Lincoln's Inn, in the county of Middlesex, on the four most usual days of payment in the year, (that is to say); the twenty-ninth day of September, &c. &c. without making any deduction or abatement whatsoever, on account or in respect of any taxes, charges, impositions, or assessments whatsoever, either already taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed on the said manors and other hereditaments, or on the said annual rent charge of pounds, or upon any person or persons for or in respect of the same by authority of parliament, or otherwise howsoever, or for or in respect of any other matter, cause, or thing whatsoever; *And* the first quarterly payment to be made on the first of the said days that shall happen next after the solemnization of the said intended marriage; *And to and for the further use,* intent, and purpose, that in case, or so often as the said annual sum, or yearly rent charge of pounds, or any part thereof, shall be unpaid by the space of twenty-one days next over any of the days hereby appointed for the payment of the same, then, and so often as the same shall happen, it shall be lawful to and for the said [*gentleman*] and his assigns, during the joint lives of the said [*gentleman*] and [*father of gentleman*], to enter into and distrain for the same, and for the costs and charges occasioned by the nonpayment thereof, upon the said manors and other hereditaments, hereby appointed and released, or intended so to be, or any part thereof, and to dispose of the distress and distresses then and there found according to law, as landlords may for rent reserved upon leases for years, to the intent that thereby, or otherwise, the said annual sum, or yearly rent of pounds, and every part thereof, so in arrear and unpaid, and all costs, charges, and expenses oc-

To the intent that gentleman may, during the joint lives of himself and father, receive a rent-charge;

with power, if the rent-charge shall be in arrear twenty-one days, to enter and distrain,

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casioned by the nonpayment thereof, shall be fully paid and satisfied; *And* to and for the further use, intent and purpose, that in case, and so often as the said annual sum and yearly rent of pounds, or any part thereof, shall at any time or times be unpaid by the space of forty days next after any of the feasts or days hereinbefore appointed for the payment thereof, then and so often, (and although there shall not have been any legal demand made thereof, or of the arrears thereof), it shall be lawful for the said [*gentleman*] and his assigns, during the joint lives of him the said [*gentleman*] and the said [*father of gentleman*], to enter into and upon, and hold the said manors and other hereditaments hereby appointed and released, or intended so to be, and to receive the rents, issues, and profits thereof, for his and their proper use and benefit, until he or they shall thereout, thereby, or otherwise, be fully paid and satisfied the said annual sum or yearly rent of pounds, and the arrears due at such entry, or afterwards to become due during his or their possession of the same manors and other hereditaments, together with all costs, charges, and expenses which he or they shall sustain by reason of the nonpayment thereof; and such possession, when taken, to be without impeachment of waste; *And to and for this further use*, intent and purpose, that if the said [*gentleman*] should depart this life, during the joint lives of the said [*father of gentleman*] and the said [*lady*], she the said [*lady*] shall thenceforth during the joint lives of her and the said [*father of gentleman*] receive and take the annual sum or yearly rent of pounds, of lawful money of Great Britain and Ireland, charged upon, and yearly issuing and payable out of all and singular the said premises hereby appointed and released, or intended so to be, with their rights, members, and appurtenances, to be paid to the said [*lady*], at or in the common Dining Hall of Lincoln's Inn, by four equal quarterly payments, on the days hereinbefore mentioned, without any deduction or abatement whatsoever out of the same or any part thereof, on account of any taxes, charges, rates, impositions, or assessments whatsoever, either already taxed, charged, imposed, or assessed, or hereafter to be taxed, charged, imposed, or assessed, on the said manors and other hereditaments hereby appointed and released, or intended so to be, or on the

and power, if rent charge shall be in arrear for forty days, to enter, and hold the hereditaments until it is paid.

and if gentleman should die in the life-time of his father and lady, lady shall receive a rent-charge, with similar power of distress and entry, and detention of rents and possession;

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said annual sum of pounds, or upon any person or persons in respect of the same, by authority of parliament or otherwise howsoever, or in respect of any other matter, cause, or thing whatsoever; the first quarterly payment to be made on such of the said days as shall happen next after the decease of the said [*gentleman*], so dying during the joint lives of his said father and the said [*lady*]; *And to and for this further use*, intent, and purpose, that in case, and so often as the said last mentioned annual sum or yearly rent of pounds, or any part thereof, shall be unpaid by the space of twenty-one days next after any of the days hereby appointed for the payment thereof as aforesaid, then and so often the said [*lady*] and her assigns shall and may, for the recovery of the same, and of all costs and damages occasioned by the nonpayment thereof, have and enjoy, during the joint lives of her and the said [*father of gentleman*], such and the like powers of distraining upon all or any of the manors and other hereditaments hereby appointed and released, or intended so to be; *And* that in case and so often as the said last mentioned annual sum or yearly rent-charge of pounds, or any part thereof, shall at any time or times be unpaid for the space of forty days next after any of the said days hereinbefore appointed for the payment thereof, the said [*lady*] and her assigns shall and may, for recovering payment of the same, and of all costs and damages occasioned by the nonpayment thereof, have and enjoy, during the joint lives of her and the said [*father of gentleman*], such and the like powers of entering upon and detaining the possession of the said manors and other hereditaments hereby appointed and released, or intended so to be, as are hereinbefore limited and provided to and for the said [*gentleman*] and his assigns, for enabling him and them to recover and compel payment of the said annual sum or rent of pounds, hereinbefore limited to him and his assigns for and during the joint lives of himself and the said [*father of gentleman*]; AND it is hereby agreed and declared between and by the parties to these presents, that subject and charged as hereinbefore is mentioned, the said manors and other hereditaments shall be and remain *To the use* of the said [*second trustees*], their executors, administrators, and assigns, for and during the

with similar powers of entry and distress, and detention of possession;

and, subject thereto, To the use of second trustees for 500 years, upon the trusts hereinafter mentioned;

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term of five hundred years, to commence from the day of the date of these presents, and thenceforth next ensuing, without impeachment of or for any manner of waste, upon the several trusts, and to and for the several ends, intents, and purposes, and subject to the provisoes hereinafter expressed and contained of and concerning the same, *And* after the expiration, or other sooner determination of the said term of five hundred years, and in the mean time subject thereto, and to the trusts thereof, *To the use* of the said [*father of gentleman*], and his assigns, for and during the term of his natural life, without impeachment of waste; *And* from and immediately after the determination of that estate by forfeiture or otherwise during the life time of the said [*father of gentleman*], *To the use* of of the said [*first trustees*], their heirs and assigns, during the natural life of the said [*father of gentleman*], *In trust* for him, and by the usual ways and means to preserve the contingent remainders hereinafter limited; *And* from and after the decease of the said [*father of gentleman*], *To the use* of the said [*gentleman*] for and during the term of his natural life, without impeachment of waste; *And* from and immediately after the determination of that estate by forfeiture or otherwise, during the life time of the said [*gentleman*], *To the use* of the said [*first trustees*], their heirs and assigns, during the natural life of the said [*gentleman*], *In trust* for him, and by the usual ways and means to support the contingent remainders hereinafter limited; *And* from and immediately after the decease of the said [*gentleman*], *To the use*, intent, and purpose, that the said [*lady*] (in case she should survive the said [*father of gentleman*] and [*gentleman*]), and her assigns, shall and may, from and after the decease of the survivor of them the said [*gentleman*] and his father, receive and take, during her natural life, one yearly rent of pounds, to be issuing out of the said manors and other hereditaments hereby appointed and released, or intended so to be, and to be payable by four equal quarterly payments in every year, on or at the days mentioned for the payment of the said annual sum or yearly rent of pounds, and the first quarterly payment to be made on such of the said days as shall next happen after the decease of the survivor of hem the said [*gentleman*] and his father; *And to and for*

and, subject thereto, to the use of father of gentleman for life;

remainder to the use of first trustees to preserve;

remainder to the use of gentleman for life;

remainder to the use of trustees to preserve;

remainder to the use that lady may receive a rent-charge for her life,

with such powers of entry and distress, and

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this further use, intent, and purpose, that in case the said annual sum or yearly rent charge of pounds, or any part thereof, shall be unpaid by the space of twenty-one days next after any of the days hereby appointed for the payment thereof as aforesaid, *Then* and so often the said [*lady*] and her assigns shall thenceforth, for the recovery of the same and of all costs and damages occasioned by the nonpayment thereof, have and enjoy, during the term of her natural life, such and the like powers of distraining upon all or any of the said manors and other hereditaments hereby appointed and released, or intended so to be; *And* in case and so often as the said annual sum or yearly rent charge, or any part thereof, shall be unpaid for the space of forty days next after any of the days hereby appointed for the payment thereof, the said [*lady*] and her assigns shall and may thenceforth, for recovering payment of the same, and of all costs and damages occasioned by the nonpayment thereof, have and enjoy, during the term of her natural life, such and the like powers of entering upon and obtaining possession of the said manors and other hereditaments hereby appointed and released, or intended so to be, as are hereinbefore provided for the said [*gentleman*] and his assigns, for enabling him and them to recover and compel payment of the said annual sum or yearly rent charge of pounds, hereby limited to him and his assigns for and during the joint lives of himself and the said [*father of gentleman*], as hereinbefore is mentioned; AND it is hereby agreed and declared between and by the parties to these presents, that, subject and charged as hereinbefore is mentioned, the said manors and other hereditaments hereby appointed and released, or intended so to be, shall, from and after the decease of the said [*gentleman*], be and remain to the use of the said [*third trustees*], to commence from the decease of the said [*gentleman*], and thenceforth next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, *Upon* the several trusts, and to and for the several ends, intents, and purposes, and under and subject to the provisions hereinbefore expressed and declared of and concerning the same; *And* immediately from and after the expiration or other sooner determination of the said term of one thousand years, and in the mean time subject thereto, and to the trusts thereof, *To*

detention of possession as are hereinbefore mentioned with respect to the other rent-charges;

remainder to the use of third trustees for 1000 years,

upon the trusts hereinafter mentioned;

remainder to the use of the first son of the marriage in tail male;

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the use of the first son of the said [*gentleman*] by the said [*lady*], and the heirs male of the body of such first son issuing, *And* for default of such issue, *To the use* of the the second and every other son of the said [*gentleman*] by the said [*lady*] severally and successfully in remainder, one after another, in order and in course as they shall respectively be in priority of birth, and the heirs male of the body and respective bodies of all and every such sons and son issuing, the elder of such sons, and the heirs male of his body, being always to take before and be preferred to the younger of the same sons, and the heirs male of his or their body or respective bodies; *And* in default of such issue, *To such uses*, upon such trusts, and for such ends, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*father of gentleman*] and [*gentleman*], by any deed or deeds, with or without power of revocation and new appointment, to be by both of them sealed and delivered in the presence of, and attested by two or more credible witnesses, shall from time to time limit, direct, or appoint; *And* in default of, and until such limitation, direction, or appointment, and so far as the same, if incomplete, shall not extend, *To the use* of the first and every other son of the body of the said [*gentleman*] by any woman or women whom he may marry after the decease of the said [*lady*], severally and successively in remainder, one after another, in order and course as they shall respectively be in priority of birth, and the heirs male of the body and respective bodies of all and every such son and sons issuing, the elder of such sons, and the heirs male of his body, always to take before and be preferred to the younger of such sons, and the heirs male of his or their body and respective bodies; *And* in default of such issue, *To the use* of the said [*brother of gentleman*] (*e*) and his assigns, for and during the term of

remainder to the second and other sons in tail male;

remainder to such uses as father of gentleman and gentleman shall appoint, and in default of appointment,

To the use of the first and other sons of gentleman by any future marriage in tail male;

remainder to brother of gentleman for life;

(*e*) According to the principles laid down in a preceding page, *ante*, p. 325, as the father and son join in settling the estate, the limitations to the brothers will not be voluntary. But if the settlement had been made by a tenant in tail in possession, then limitations to his brothers would be merely voluntary. It has been seen, that the limitation to the children of a future marriage will be valid against a purchaser, *ante*,

Limitations to the brother in the settlement not voluntary.

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his natural life, without impeachment of waste; *And* immediately from and after the determination of that estate, by forfeiture or otherwise, during the life of the said [*brother of gentleman*], *To the use* of the said [*first trustees*], and their heirs, during the life of the said (*brother*), *In trust* for him, and by the usual ways and means to support the contingent remainders hereinafter limited; *And* from and immediately after the decease of the said [*brother*], *To the use* of the first and every other son of the said [*brother*], severally and successively, and in remainder one after another, in order and course as they shall respectively be in priority of birth, and to the heirs male of the body and respective bodies of all and every such son and sons issuing, the elder of such sons, and the heirs male of his body, being always to take and be preferred before the younger of the same sons, and the heirs male of his body and respective bodies; *And* in default of such issue, *To the use* of the said [*second brother of gentleman*] and his assigns, for and during the term of his natural life, without impeachment of waste; *And* immediately from and after the determination of that estate by forfeiture, or otherwise, in the life time of the said [*second brother*], *To the use* of the said [*first trustees*] and their heirs, during the life time of the said [*second brother*], *In trust* for him, and by the usual ways and means to support the contingent remainders hereinafter limited; *And* immediately from and after the decease of the said [*second brother*], *To the use* of the first and every other son of the body of the said [*second brother*], severally and successively, and in remainder one after another, in order, and as they shall respectively be in priority of birth, and the heirs male of the body, and respective bodies of all and every such sons and son issuing; the elder of such sons, and the heirs male of his body, being always to take before, and be preferred to the younger of the same sons, and the heirs male of his and their body,

remainder to the use of trustees to preserve;

remainder to the use of his sons in tail male;

remainder to the use of second brother of gentleman for life;

remainder to the use of fourth trustees to preserve;

remainder to the use of the first and other sons of second brother in tail male;

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p. 325; but as this has generally been considered doubtful in the profession, such a limitation is generally preceded by a limitation to such uses as the gentleman, or as the gentleman and his father, should appoint, as above. A limitation of this nature should always precede mere voluntary limitations.

and respective bodies; and in default of such issue, *To the use* of the said [*third brother*] and his assigns, for and during the term of his natural life, (*similar limitations in favour of the other brothers of gentlemen, and to their first and other sons in tail male*); *And* in default of such issue, *To the use* of the said [*gentleman*] and his assigns for ever (*f*).

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remainders to other brothers; remainder to gentleman in fee.

(*f*) The following provision is here frequently introduced, where the premises are limited to numerous tenants for lives.

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that all and every the person and persons, who, by virtue of the limitations hereinbefore contained, or of this proviso, shall become entitled to the possession of the rents and profits of the manors and other hereditaments hereby appointed and released, or intended so to be, and who shall not be called by the name nor use the arms of , shall and do, within the space of one year next after they shall respectively become entitled to the possession, or to the rents and profits thereof; *And* that the husbands of such as shall be females, shall and do, within one year next after their respective wives, or their said husbands in right of their said wives, shall so become entitled as aforesaid; or if any such person or persons being a female or females, shall at the time of such her or their marriage, or respective marriages, be so entitled as aforesaid, *Then* within one year next after the solemnization of such marriage respectively, take upon himself, herself, or themselves respectively, and use in all deeds or writings, whereto or wherein he, she, or they shall or may be a party or parties, and upon all other occasions, the surname of , with his, her, or their own family surname, *And also*, shall and do quarter the arms of , with his, her, or their own family arms; *And* shall and do, within the space of one year then next ensuing, apply for and endeavour to obtain an act of parliament, or proper licence from the crown, or take such other means as may be requisite and proper, to enable and authorize him, her, or them, to take, use, and bear the said surname and arms of : AND it is hereby agreed and declared between and by the parties to these

Proviso that all persons who shall become entitled to the rents, shall, within the space of one year after they shall be so entitled,

take upon themselves the name of ——,

and apply for a license to enable them so to do;

and if they shall refuse, limitation to

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Accumulation clause.

PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that if at any time within the period of twenty-one years, to be computed from the decease of the survivor of them the said [*father*] and [*gentleman*], the person for the time being entitled in possession to the rents, issues, and profits

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them to be void, and hereditaments shall go to the person in remainder.

presents, that in case any such person and persons shall refuse, or neglect, or discontinue to take or use any such surname and arms, and to take such proper steps and means as may be requisite to enable and authorize him, her, or them so to do, within the space of one year, then from and after the expiration of the said space of one year, the limitation of all and every the manors and other hereditaments hereinbefore limited to him, her, or them, so neglecting or refusing, or to her or them whose husband or husbands shall so refuse or neglect, shall cease, determine, and become utterly void; *And* all the said manors and other hereditaments shall, in such case, immediately thereupon go to the person next in remainder, under the limitations hereinbefore contained, in the same manner as if such person or persons so refusing or neglecting, or whose husband or husbands shall so refuse or neglect, being a tenant or tenants for life, was or were dead, or being a tenant or tenants in tail male or in tail, was or were dead, without leaving any heir inheritable to the estate tail or estates tail, then vested in the person or persons so refusing or neglecting, or whose husband or husbands shall so refuse or neglect, charged nevertheless with, and subject and without prejudice to any such jointure or jointures, portion or portions, or the term or terms of years, remedies, and securities for the same respectively, or to any such lease or leases, or demise or demises, which before any cesser or determination of the estate of the person or persons so neglecting or refusing, or whose husband or husbands shall neglect or refuse, shall have been limited, appointed, settled or created, of the manors and other hereditaments hereby appointed and released, or intended so to be, or any of them, by any of the persons entitled thereto, under or by virtue of the limitations hereinbefore contained, pursuant to and by virtue of the powers in these presents, for those purposes respectively

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of the manors and other hereditaments hereinbefore appointed and released, or intended so to be, shall be under the age of twenty-one years, then and in such case, and so often as the same shall happen, they, the said [*first trustees*] and the survivor of them, and the executors and administrators of such survivor, do and shall (but sub-

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Agreement that the cesser of the estate of any tenant for life, shall not prejudice any contingent remainder;

contained, or any of them; And it is hereby agreed and declared between and by the parties hereto, that the cesser or determination of the estate of any tenant for life, by force of the provisions hereinbefore contained, shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited, to his, her, or their son or sons, daughter or daughters, or any other person or persons; and that the remainders limited to the said [*first trustees*], their heirs and assigns, for the life of such tenant for life, shall after such cesser or determination take effect and continue, for preserving such contingent remainders, and giving them effect as they may arise; *And* that immediately from and after such cesser or determination of such preceding estate for life, and during the suspense and contingency of such then expectant remainder, the said [*first trustees*] and the survivor of them, his heirs and assigns, shall receive, pay, and apply the rents and profits of the said manors and other hereditaments, which should belong to such tenant for life, if such cesser or determination had not taken place, unto the person and persons, for the intents and purposes, and in the manner to and for and in which the same rents and profits would be, or would have been payable and applicable, under and by virtue of the limitations and provisoes in these presents contained, in case such tenant for life were actually dead, so that immediately from and after such cesser or determination, the issue of such tenant for life entitled for the time being under the limitations aforesaid, to the said manors and other hereditaments in remainder immediately expectant on the decease of such tenant for life, may be entitled to the rents and profits of the said manors and other hereditaments for his and their own proper use and benefit respectively, during the life of the parent, as if such parent were dead; and that in case

and that the rents shall be paid as if tenant for life were dead.

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ject and without prejudice to the charges hereinbefore created, and to the said terms of five hundred years and one thousand years, and to the respective trusts hereinbefore declared concerning the same, and to the uses and estates to be created by virtue of the powers hereinafter contained,) during such minority, receive and take the

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no such issue be in existence, then during the vacancy or contingency of such issue, the person next entitled for the time being, under the limitations aforesaid, to a vested remainder in the said manors and other hereditaments expectant on the decease of such tenant for life, and such failure of issue of her or his body, shall and may be entitled to the said rents and profits, for his, her, or their proper use and benefit respectively, but without any exclusion of or prejudice to the estate, interest, or right of any such issue afterwards coming into existence, but only from the time of the birth of such issue respectively."

Where other hereditaments are expected to devolve on the eldest son of the marriage, the following proviso is very commonly introduced, in this place:

Proviso that if hereditaments in the county of C. shall devolve upon the eldest son of the marriage, his estate in the hereditaments hereby settled shall become void, and shall go in the same manner as if he were dead.

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that in case and so often as certain manors and other hereditaments situate in the parish of L. in the county of C. with their rights, members, and appurtenances [*describe the lands particularly*], [or* such part or parts thereof, the clear annual rents, issues, and profits of which, (after satisfying the interest of the mortgages or other incumbrances, bearing interest, then affecting the same, and the rent charges, or other yearly payments then issuing thereout, or charged thereupon, and the average deductions to be made thereout, for or in respect of taxes or other parliamentary impositions) shall amount to the sum of fifteen hundred pounds of lawful money of Great Britain and Ireland], shall devolve upon and descend to the eldest son of the marriage, for the time being, for an estate in fee simple, or an estate in tail male or in tail, or shall devolve upon or descend to any issue male of his body, for an

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* The clause in brackets is of a special nature, and should be omitted, if not according to the intentions of the parties.

rents, issues, and profits of the said manors and other hereditaments, and apply from time to time so much and such part thereof as they or he in their discretion shall think fit, not exceeding in the whole, or in any one year, the sum of pounds, for or towards the maintenance or education of the person so for the time being beneficially en-

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estate of inheritance in fee simple, or in tail male, or in tail; *And* the said eldest son for the time being, or other the person or persons upon whom the said manors and other hereditaments shall so devolve or descend, shall be entitled, either in possession or remainder, to the manors and other hereditaments hereby appointed and released, or intended so to be, for an estate for life, or in tail male, *Then*, and in such case, and so often as the same shall happen, the estate hereinbefore limited to or for the benefit of, or in trust for him or them, or his or their issue, of and in all and every the manors and other hereditaments hereby appointed and released, or intended so to be, shall then cease, determine, and become void; *And* the same manors and other hereditaments shall immediately thereupon go to the person or persons next in remainder expectant on the decease and failure of issue male of the persons so becoming entitled to the said manor or other hereditaments, or such parts thereof as aforesaid, in the same manner as such person or persons so in remainder would take or have taken the same, by virtue of the limitations hereinbefore contained, in case he or they so becoming entitled to the said manor and other hereditaments, situate in the said parish of L., in the said county of C., was or were actually dead, without issue male of his or their body, or respective bodies issuing."

The following is a shorter, and it would seem, a neater form of this clause:

"PROVIDED ALWAYS and it is hereby agreed and declared, that if by virtue of any of the limitations hereinbefore contained, the eldest son of the said marriage, for the time being, or the issue male of his body, shall become actually entitled to the possession, or to the receipt of the rents and profits of certain messuages and tenements, lands, hereditaments, and premises situate in the county of C., and any other of the younger sons of the said marriage, or any issue male of such younger son, shall be then

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titled as aforesaid, and lay out and invest the residue in his or their names or name, in the purchase of a competent share or shares in the parliamentary stocks or public funds of Great Britain, or upon real securities in England or Wales, to be from time to time altered and varied as occasion may require, and receive the interest, dividends,

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living, or shall thereafter come into existence, then and in that case, and from time to time, the uses hereinbefore limited in favour of the eldest son of the said marriage for the time being, and his issue male, of and in the said manors, messuages, or tenements, lands, hereditaments, and premises hereby appointed and released, or intended so to be, shall absolutely cease and determine, as if the eldest son of the said marriage for the time being, were dead, without issue male of his body. And it is hereby agreed, that if, by virtue of this proviso, the said manors, messuages or tenements, lands, hereditaments, and premises hereby appointed and released, or intended so to be, shall have shifted from the eldest son of the said marriage for the time being, or from his issue male, and there shall afterwards be a failure of all the younger sons of the said marriage, and of their issue male entitled under the limitations hereinbefore contained, then and in that case, the said manors, messuages or tenements, lands, hereditaments, and premises, hereby appointed and released, or intended so to be, shall return to, remain, and be to the use of the eldest son of the said marriage, and to the heirs male of his body successively, according to their respective seniorities, in tail male, but so that the said manors, messuages or tenements, lands, hereditaments and premises hereby appointed and released, or intended so to be, shall be still subject to this proviso in case issue male of the said younger sons shall be thereafter born: And it is hereby agreed and declared, that if the eldest son of the said marriage for the time being shall become entitled in possession to the said messuages or tenements, lands, hereditaments, and premises, situate in the county of C., before he shall have exercised the powers hereinbefore given and limited, of charging the said manors, messuages, lands, tenements, and hereditaments hereby appointed and released, or intended so to be, with jointures and portions,

Proviso that if eldest son shall become entitled to lands in the county of C. before he shall have exercised his powers, they shall cease, and he shall have similar powers over the newly acquired estate.

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and annual produce of the said stocks, funds, and securities of the like nature; so that the same rents, issues, and profits, stocks, funds, securities, interest, dividends, and annual produce, may, during such minority as aforesaid, be accumulated; And it is hereby agreed and declared, that the said [*first trustees*], and the survivor of them, his executors, administrators, and assigns, shall stand and be possessed of and interested in the said rents, issues, and profits, stocks, funds, securities, interest, dividends, and annual produce, and the accumulations thereof respectively, *Upon trust*, at the end of such minority, or sooner if they or he shall think fit and proper, to call in and convert the same respectively into money, and by, with, and out of the money to be produced thereby, to pay off and discharge any sum or sums of money, which shall have then been charged on the said manors and other hereditaments hereby appointed and released, or intended so to be, or any of them, under or by virtue of the trusts of the said term of one thousand years, or which shall have been charged on the said manors and other hereditaments hereby appointed and released, or intended so to be, or any of them, under

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the said powers shall cease and determine, and such eldest son for the time being shall have such and the same powers over the said messuages or tenements, lands, hereditaments, and premises situate in the county of C , as are hereinbefore given and limited to and over the said manors, messuages or tenements, lands, hereditaments, and premises hereby appointed and released, or intended so to be: and if such eldest son for the time being shall become entitled in possession to the said messuages or tenements, lands, hereditaments, and premises situate in the county of C., after he or they shall have exercised the said powers, or either of them; then, and in that case, the jointures and portions which shall have been so charged by him or them respectively, on the said manor, messuages, lands, tenements, and hereditaments hereby appointed and released, or intended so to be, and the powers, remedies, and term and terms of years which shall have been given and created for securing the same, shall absolutely cease, determine, and be of no effect, and the said messuages or tenements, lands, hereditaments, and premises, situate in the county of C., shall be charged with the same."

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or by virtue of the powers hereinafter contained, and subject thereto, do and shall lay out and invest the money so to be produced, as last hereinbefore is mentioned, or so much thereof as shall remain, after answering the purposes aforesaid, in the purchase of or upon freehold estates of inheritance to be situate in England, or of copyhold or leasehold lands, convenient to be held therewith, or with the lands hereinbefore granted, released, and confirmed; *And* do and shall settle and assure, or cause to be settled and assured, the lands and hereditaments so to be purchased, as last hereinbefore is mentioned, in such manner as is hereinbefore expressed, with respect to the lands from the rents and profits of which such accumulations shall have proceeded, or as near thereto as the deaths of the parties, and other circumstances, will then admit; *But* if any such investment shall be made during the continuance of the period of accumulation, the rents and profits of the lands so to be purchased shall be accumulated, in the manner and for the purposes hereinbefore mentioned; And it is hereby agreed and declared between and by the parties to these presents, that the annual sums of

Provision that limitations to lady are in bar of dower.

pounds and pounds, hereinbefore limited to the use of the said [*lady*], are to be, and she doth accept the same for her jointure, and in bar of the dower, thirds, or freebench, which at the common law, or by custom, she the said [*lady*] would otherwise be entitled to claim from any manors, lands, tenements, and hereditaments, of or to which the said [*gentleman*], during the joint lives of him and the said [*lady*], should be seised of or entitled to for an estate of inheritance; And it is hereby agreed and declared between and by the parties to these presents, that the said manors and other hereditaments hereby appointed and released, or intended so to be, are limited to the said [*second trustees*], their executors, administrators, and assigns, for the said term of five hundred years, *Upon trust*, that when and so often as the said annual sums or yearly rents of pounds, pounds, and pounds, or any of them, or any part of the same respectively, shall be in arrear and unpaid, for the space of sixty days next after any of the days appointed for payment thereof as aforesaid, then and in any such case, and so often as the same shall happen, the said

Declaration that the term of 500 years is limited to trustees upon trust, when any of the three rent-charges shall be in arrear sixty days, to raise the same by sale or mortgage of the hereditaments therein comprised,

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[*second trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, *Do* and shall, by and out of the rents, issues, and profits of the said manors and other hereditaments, or by demising, leasing, mortgaging, or selling the same, or any part thereof, for all or any part of the said term, or by bringing actions against the tenants or occupiers of the same premises, for the recovery of the rents, issues, and profits thereof, raise and pay to the said [*gentleman*] and his assigns, or to the said [*lady*] and her assigns, as the case may be, the said annual sum or yearly rent charge which shall be in arrear and unpaid as aforesaid, and all costs, charges, damages, and expenses, which the said [*gentleman*], his executors, administrators, or assigns, or they, the said [*second trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall sustain or be put to, by reason of the nonpayment thereof, or otherwise in the execution of the said trusts; *And upon this further trust*, that the said [*second trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, *Do* and shall, from time to time, pay the surplus of the monies raised by the ways and means aforesaid unto, and also permit and suffer the residue or surplus of the said rents, issues, and profits of the said manors and other hereditaments, comprised in the said term of five hundred years, which shall remain after, and not be applied, upon and for the trusts, intents, and purposes hereinbefore mentioned, to be from time to time received and taken by the person or persons respectively, who for the time being shall be next entitled to the reversion and remainder of the said premises, expectant on the determination of the said term, to and for his and their use and benefit. PROVIDED ALWAYS, and it is hereby agreed and declared by and between the parties to these presents, that when all the trusts hereby declared of and concerning the said term of five hundred years, shall be fully performed and satisfied, or become unnecessary, or incapable of taking effect, and the said [*second trustees*], and each of them, and each of their executors, administrators, and assigns, shall be fully reimbursed and satisfied all costs, charges, and expenses occasioned by or relating to the said trusts of the said

and permit the owner of the reversion to recover the residue of the rents.

Proviso for cesser of term of 500 years.

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term of five hundred years, *Then*, and immediately thereupon, the said term of five hundred years shall (but without prejudice to any disposition which shall have been made of the same, or the powers and provisoes contained therein for answering the trusts and purposes aforesaid) absolutely cease and determine, and be utterly void; AND it is hereby agreed and declared between and by the parties to these presents, that the manors and other hereditaments are hereby appointed and released to the said [*third trustees*], and their executors, administrators, and assigns, for the said term of one thousand years, *Upon trust* that in case there shall be any child or children of the said [*gentleman*] by the said [*lady*] (other than and besides an eldest or only son who by virtue of, or under the limitations hereinbefore contained, shall for the time being be seised of the actual freehold of the manors and other hereditaments hereinbefore mentioned, expectant, or entitled to the same in remainder immediately expectant on the decease of the survivor of them the said [*gentleman*], and his said father, and the said term of five hundred years), *Then*, and in such case, the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, *Do* and shall, (but subject and without prejudice to the raising and paying of the said annual sum of pounds to the said [*lady*], and to the trusts and powers hereinbefore given and provided for securing and recovering the same) by sale or mortgage, or any other disposition of the said manors and other hereditaments, or any part of the same, for all or any part of the said term of one thousand years, or by felling timber or wood upon, or by bringing actions against the tenants or occupiers of the same manors and other hereditaments for the rent in arrear, or by, with, and out of the rents, issues, and profits of the said hereditaments in the mean time, or by any other reasonable ways and means, raise and levy the sum of pounds, for the portion or portions of such child or children, and apply the same in manner hereinafter mentioned, (that is to say); if there shall be but one such child, the said sum of pounds to be for the portion of that one child, and to be paid to such child, being a son, at his age of twenty-one years; and being a daughter, at her age of

Declaration that the term of 1000 years is limited to third trustees, upon trust, that if there shall be any children of the marriage (except an eldest or only son),

(but subject to rent-charge to lady)

by sale or mortgage of the hereditaments therein comprised, or by some other means,

to levy the sum of —*l.* for the portions of such children, if but one, the whole to that one, to be vested at twenty-one, and if a daughter, at twenty-one or marri-

twenty-one years, or on the day of her marriage under that age, with the consent of her guardian or guardians for the time being, which shall first happen; and to be paid to him or her at the same age, day, or time, if the same shall happen after the decease of the survivor of them, the said [*gentleman*] and [*father of gentleman*], but if the same shall happen in the life time of the said [*father of gentleman*], and the said [*gentleman*], or in the life time of the survivor of them, immediately after the decease of such survivor, *And* if there shall be two or more such children, then the said sum of pounds to be for the portions of such two or more children, to be divided between or among them in equal shares; *And* the share or shares of such of them as shall be a son or sons, to be an interest vested, or interests vested in him or them respectively, at his or their age or respective ages of twenty-one years; and the share or shares of such of them as shall be a daughter or daughters, to be an interest vested, or interests vested in him or them respectively, at her or their age or respective ages of twenty-one years, or on the day or respective days of her or their marriage under that age, with such consent as aforesaid, and to be paid to him, her, or them respectively, if the same shall happen after the decease of the survivor of them the said [*father of gentleman*] and [*gentleman*]; but if the same shall happen in the lifetime of them or the survivor of them, then immediately after the death of the survivor: PROVIDED ALWAYS, that if any such child or children, being a younger son, shall depart this life, or become an eldest or only son, so for the time being seised or entitled as aforesaid, or being a daughter, shall depart this life before the share hereby intended for him, her, or them respectively shall so become vested as aforesaid, then, and in every such case, as well the share hereby originally provided for every such younger son so dying or becoming an eldest or only son seised or entitled as aforesaid, and for every such daughter so dying, as the share or shares which by virtue of this present clause shall have survived or accrued to him, her, or them respectively, or so much thereof as shall not have been previously applied for her or their preferment or advancement in the world, by virtue or in

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age, and payable after the death of gentleman and father of gentleman.

and if two or more such children, in equal shares, to be vested at twenty-one, or if a daughter, at twenty-one or marriage, and to be paid after decease of gentleman and his father.

Proviso for the survivorship and accruer of shares;

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pursuance of the power or authority hereinafter for that purpose contained, shall from time to time go, accrue, and belong to the survivor or survivors, or others and other of the said children, and so far as circumstances will admit, shall vest in, and be paid to him, her, or them, if more than one, in equal shares, at such time or times, and in such manner as is hereinbefore expressed and declared, touching and concerning his, her, or their original portion or portions; *And upon this further trust*, that if no son of the said [*gentleman*], by the said [*lady*], or by any after taken wife, shall attain the age of twenty-one years, and they the said [*gentleman*] and [*lady*] shall have two or more daughters who shall attain that age, or marry with such consent as aforesaid, then and in that case the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall, by the ways and means hereinbefore mentioned, or any of them, levy and raise the sum of pounds, of lawful money of Great Britain and Ireland, for additional provisions for such daughters, and divide the same between or among such daughters, in equal shares: PROVIDED ALWAYS and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*third trustees*] and the survivor of them, and the executors, administrators, and assigns of such survivor, at any time or times after the decease of the survivor of them the said [*father of gentleman*] and [*gentleman*], with and out of the rents, issues, and profits of the said manors and other hereditaments hereby appointed and released, or intended so to be, to levy and raise, and pay and apply for the maintenance and education of the child and children for the time being of the said [*gentleman*] by the said [*lady*], his intended wife, for whom a portion or portions is or are intended to be provided as aforesaid, in the mean time, and until his, her, or their portion or respective portions shall become payable, such yearly sum or sums of money as he or they shall think proper, not exceeding in any one year, for any one such child, what the interest of his or her then presumptive portion, under the trusts of the said term of one thousand years, would amount to, after the rate of five pounds for every one hundred pounds by

and upon this further trust, that if there shall be no son who shall attain twenty one, and two or more daughters, to raise the further sum of —*l.* for additional portions.

Proviso for the maintenance and education of the children.

the year: PROVIDED ALSO that it shall and may be lawful to and for the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, during the joint lives of the said [*father of gentleman*] and [*gentleman*], or the survivor of them, with their or his consent and approbation; and after the decease of such survivor, then at the discretion and and of the proper authority of the said [*third trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, to levy and raise, by the ways and means aforesaid, or any of them, and to apply for the advancement and preferment in the world, or otherwise for the benefit of any son and sons of the said [*gentleman*] by the said [*lady*], (other than and except an eldest or only son so for the time being seised and entitled as aforesaid,) any sum or sums of money, not exceeding in the whole, for any one such son, one moiety or equal half part of his then presumptive portion under the trusts aforesaid, and the same shall be considered and taken as part of the same: PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that if the said [*gentleman*] shall give and advance to and with any child or children, for whom a portion or portions is or are intended to be hereby provided as aforesaid, any sum or sums of money for or towards his, her, or their preferment or advancement in the world, then and in such case, (unless the said [*gentleman*] shall by some writing under his hand direct the contrary,) if such advanced sum or sums of money shall be less than such portions or portion, the same shall be considered as part of such portion or portions; *And* such money only shall be raised for the portion or portions of such child or children, to or with whom such sum or sums of money shall be so given and advanced by the said [*gentleman*], as, together with the sum or sums of money so given or advanced, will amount to or complete the sum or sums of money intended to be hereby provided for such child or children respectively; *But* if such advanced sum or sums of money shall be equal to or greater than the whole of the portion or portions intended to be hereby provided for such child or children respectively as aforesaid, the

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Powers to trustees in life-time of father of gentleman and gentleman, with their consent, and after their decease, of their own authority, to levy a moiety of children's portion for advancement.

Proviso, that if gentleman shall give any sum to children, then, unless gentleman shall by writing direct the contrary, such sum shall be considered as part of their portions;

and if such sum shall be equal to or greater than the intended portions, the same shall be deem-

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same shall be accounted in full satisfaction of the whole of such his, her, or their portion or portions; *And* then and in such case, the said [*gentleman*] shall be entitled to the sum or sums of money so to be advanced by him as aforesaid; and the same shall be considered as part of his personal estate, unless the said [*gentleman*] shall by some writing under his hand direct the contrary, and make some particular disposition, or direct the application of the same: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the said [*third trustees*] and the survivor of them, and the executors, administrators, and assigns of such survivor, shall permit and suffer the rents, issues, and profits of the said manors and other hereditaments comprised in the said term of one thousand years, or so much thereof as shall remain after, or not be applied for answering the trusts and purposes aforesaid, to be received by the person or persons who, by virtue of or under the limitations hereinbefore contained, shall for the time being be entitled to the said manors and other hereditaments in remainder or reversion immediately expectant on the determination of the said term: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that when the trusts hereinbefore declared of and concerning the said term of one thousand years shall be fully performed and satisfied, or shall become unnecessary or incapable of taking effect, and all the costs, charges, and expenses of the said [*third trustees*] and each of them, and their and each of their heirs, executors, administrators, and assigns, if any, attending the same, shall be fully paid off and discharged; *Then* and in such case, and immediately thereupon, the same term of years shall, subject and without prejudice to any disposition which shall have been made, and the premises comprised therein for the purposes aforesaid, absolutely cease, determine, and be void(*g*):

ed to be a full satisfaction for them; and the portions shall be considered as the personal estate of the gentleman.

Proviso that trustees shall permit the residue of the rents to be received by the person entitled in reversion.

Proviso for the cesser of term.

(*g*) A term is often limited to trustees for the purpose of enabling them to cut down timber for sale. The trusts of it may be declared as follows:

Declaration that term was limited to trustees upon trust,

"AND it is hereby decreed and declared between and by the parties to these presents, that the said manors, heredita-

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PROVIDED ALWAYS (*h*), and it is hereby agreed and declared between and by the parties to these presents, that after the decease of the said [*father of gentleman*], or in his life time, with his consent in writing, it shall be lawful for the said [*gentleman*], in case he shall survive the said [*lady*], by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him the said [*gentleman*] sealed and delivered in the presence of, or attested by two or more credible witnesses, or by his last will and testament in writing, or by any co-

Power for gentleman to jointure any after-taken wife;

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ments, and premises, were limited to the said [*trustees*], their executors, administrators, and assigns, for the term of one hundred years, *Upon* and for the trusts, intents, and purposes hereinafter mentioned, (that is to say); *Upon trust* that the said [*trustees*], or the survivor of them, or the executors, administrators, and assigns of such survivor, do and shall from time to time, during the continuance of the said term of one hundred years, with the consent of the said [*gentleman*] and [*lady*], or the survivor of them, or the executors, administrators, or assigns of such survivor, to be testified by some writing under their or his hands or hand, fell and cut down, and cause to be felled and cut down, all or any timber, or timber trees of full growth, which now do, or during the said term of one hundred years, shall grow within or upon the said manors, hereditaments, and premises, or any part or parts thereof, to be ascertained and agreed upon by the said [*gentleman*] and [*lady*], (which ascertaining and agreement shall be testified by some writing under the hands of the said [*gentleman*] and [*lady*],) not exceeding in the whole the sum of pounds of lawful money of Great Britain and Ireland; *And* do and shall sell the timber and timber trees so to be felled and cut down, either altogether or in parcels, by auction or by private contract, to any person or persons that may be willing to purchase the same,

that they shall, with consent of gentleman and lady, cut down timber upon the hereditaments, of the value of —*l.*,

and sell the same:

(*h*) Where brevity is desirable, power may be given to the gentleman and his brothers to jointure and portion in one form.

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dicil or codicils thereto, to be by him signed and published in the presence of and attested by three or more credible witnesses, to limit or appoint to any woman or women respectively with whom he shall or may intermarry, for her or their life or lives, for her or their jointure or jointures, and in bar, or without being in bar, of her or their dower or dowers, any annual sum or sums of money or yearly rent charge, not exceeding in the whole the yearly sum of pounds, to be issuing and payable out of, and charged and chargeable upon, all or any part of

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for the best price that may be conveniently had or gotten for the same; AND it is hereby agreed and declared between and by the parties to these presents, that the receipts in writing of the said trustees, or the survivor of them, or the executors or administrators of such survivor, shall be a sufficient and full discharge to the person or persons purchasing such timber or timber trees, for so much money as in such receipt shall be expressed or acknowledged to be received: *And* that the person or persons paying in such money, and having such receipt, shall not be answerable or accountable for the misapplication or nonapplication, or be bound or concerned to see to the application of his or their purchase money, neither shall such purchaser be bound or concerned to examine into the propriety of cutting down, or felling the particular quantity or value of timber, offered to him or them for sale, or whether the said [*gentleman*] and [*lady*], or either of them, or their or either of their heirs, executors, administrators, or assigns, have consented or agreed to such sale or sales; AND it is hereby agreed and declared between and by the parties to these presents, that the said trustees, their executors, administrators, and assigns, shall stand and be possessed of and interested in the money to arise by the sale or sales of such timber or timber trees, *Upon trust* to pay and apply the same, so far as the same will extend, in and towards the payment, satisfaction, and discharge of the incumbrances hereinbefore mentioned to affect the said manors, hereditaments, and premises, hereby appointed and released, or intended so to be, in such order, course, and

The receipts of trustees to be sufficient discharges.

Agreement that trustees shall stand possessed of monies to arise from sale, to discharge incumbrances.

the said manors and other hereditaments hereinbefore appointed, with their rights, members, and appurtenances, clear of all parliamentary taxes and outgoings whatsoever, and to be paid in such manner as to him shall seem meet; and for the purpose of securing the said annual sums or yearly rent-charges to be appointed as aforesaid (but subject and without prejudice as aforesaid), to limit or appoint to the woman or women to whom the said annual sums or yearly rent-charges shall be so appointed as aforesaid, with the usual powers and remedies for recovering and enforcing payment thereof, by distress and entry upon,

with usual powers for securing it,

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manner, as to the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, shall seem meet. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that when the said [*trustees*], or the survivor of them, or the executors and administrators of such survivor, shall have felled and cut down such and so many timber trees as shall have sold for the sum of pounds; and the said [*trustees*], and each of them, their and each of their executors, administrators, and assigns, shall be fully reimbursed and satisfied all costs, charges, and expenses to be occasioned by or relating to the trusts hereinbefore declared of and concerning the said term of one hundred years, *Then* and from thenceforth the said term of one hundred years shall cease, determine, and become utterly void to all intents and purposes whatsoever, any thing hereinbefore contained to the contrary notwithstanding."

Proviso for cesser of term.

The following power may here be conveniently inserted:

"PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, That it shall and may be lawful to and and for the said [*gentleman*], at any time after the determination of the said term of one hundred years, but not before, to fell and cut down, or cause to be felled and cut down, so much and such parts of the timber and timber trees, and other trees, woods, and underwoods, which now are or which shall at any time during the life of the said [*gentleman*] be standing and growing on the said manors, hereditaments, and premises

Power for gentleman to cut timber.

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and perception of the rents and profits, of the hereditaments so to be charged with the said annual sum or sums, yearly rent-charge or yearly rent-charges; *And* also to limit and appoint the hereditaments, so to be charged as aforesaid, to any person or persons whomsoever, for any term or terms of years, as to him shall seem meet, as a further security for the payment of the said annual sum or annual sums, yearly rent-charge or yearly rent-charges, but so that every such term or terms of years, if any such shall be limited, be made to determine on the death of the woman or women for the benefit of whom the same shall be

and to limit a term for securing the same.

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hereby appointed and released, or intended so to be, and to sell, dispose of, and carry away the same, or cause the same to be sold, disposed of, and carried away, as the said [*gentleman*] shall think fit and proper."

The following power is here very frequently inserted, where manors are settled:

Power to trustees to enfranchise copyholds.

"PROVIDED ALSO, that it shall be lawful for the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, with the consent in writing of the person, who under or by virtue of the limitations hereinbefore contained, shall be tenant for life, or tenant in tail male in possession of the said manors and other hereditaments hereby appointed and released, or intended so to be, if such person should have attained his or her age of twenty-one years, but if such person shall be under the age of twenty-one years, then at their or his discretion or sole authority, for such fine or consideration in money as they or he shall think proper, to make any enfranchisement of any copyhold or customary messuages, lands, or hereditaments, within the said manor of , and for that purpose, by deed sealed and delivered by them or him respectively, in the presence of and attested by two or more credible witnesses, to make such disposition and appointment of the messuages, tenements and hereditaments, proposed to be enfranchised, as will enable the persons entitled thereto, from that time forwards, to hold the same, and the rights, liberties, and privileges belonging thereto, as freehold, and absolutely freed and discharged from all customary rents, fines, heriots, services, and

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created; and the payment of the arrears of her and their rent-charge or respective rent-charges, and the expenses to be incurred by the nonpayment thereof, and that such limitation or limitations, appointment or appointments respectively shall be made, either before or after any such future marriage of him the said [*gentleman*], as to him should seem meet: PROVIDED ALSO and it is hereby agreed between and by the parties to these presents, that if the said [*lady*] shall depart this life in the life-time of the said [*gentleman*], and if there shall be no child of the said [*gentleman*], by the said [*lady*], who, being a younger son for the time being, shall attain the age of twenty-one years, or being a daughter, shall attain that age, or marry under that age, with such consent as aforesaid; then it shall and may be lawful for the said [*gentleman*], after the decease of the said [*father of gentleman*], or with his consent in writing, during his life, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will

Power to gentleman, if lady shall die before him, and there shall be no children of the marriage who shall attain a certain age or marry, to charge hereditaments with portions for children of any future marriage, other than the eldest son, in any sum not exceeding —*l.*

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customs, except suit and service of court, and such yearly payments as it shall be judged expedient to reserve, or to charge upon the same hereditaments; *And* it is hereby agreed that the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, may receive and take for every enfranchisement, any sum or sums of money which they or he shall think proper, and lay out and invest the same in the purchase of freehold or copyhold hereditaments, and settle the hereditaments so to be purchased, to the uses and upon the trusts hereinbefore expressed and contained of and concerning the said manor of , and until such purchase or purchases can be found, shall invest the money arising from the said enfranchisement, in the purchase of three per cent. consolidated bank annuities, in their or his names or name, and pay the interest, dividends, and annual produce thereof to the person who, for the time being, would be entitled to the rents of the tenements and hereditaments so to be purchased, if the same were actually purchased and settled in pursuance of the trusts and directions hereinbefore contained."

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and testament in writing, or by any codicil or codicils thereto, to be by him signed and published in the presence of and attested by three or more credible witnesses, to subject and charge all or any of the said manors and other hereditaments hereby appointed and released, or intended so to be, with their rights, members, and appurtenances, to and with the payment of any sum or sums of money for the portion or portions of all and every, or such one or more exclusively of the other or others of the child or children of him the said [*gentleman*] by any woman or women with whom he may intermarry after the decease of the said [*lady*], other than or besides the eldest or only son for the time being, entitled to the said manors and other hereditaments hereby appointed and released, or intended so to be, with their rights, members, and appurtenances, for an estate in tail male in possession or in remainder expectant on the decease of the survivor of them the said [*father of gentleman*] and [*gentleman*], not exceeding in the whole the sum of pounds, with interest for the same, at any rate not exceeding five pounds for every one hundred pounds by the year; *And* the said sum of pounds to be an interest vested, or interests vested in, and to be paid to such child or children respectively, at such age, day, or time, or respective ages, days, or times, and if more than one, to be divided between and among them in such shares, to be charged with the payment of such annual sum or sums of money to them or any of them, and with such limitations over, between, and among them, and to be attended with such provisions for their advancement or maintenance, and to be subject to such conditions, under such restrictions, and generally in such manner for their or any of their benefit, as the said [*gentleman*] shall think proper, and shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and attested by three or more credible witnesses, direct or appoint; *And* that for the purpose of raising such provision or provisions, and interest for the same, it shall and may be lawful for the

said [*gentleman*], by the same, or any other deed or deeds, instrument or instruments, so sealed, delivered, and attested as aforesaid, or by his last will and testament in writing, or any codicil or codicils thereto, so signed, published, and attested as aforesaid, to limit or appoint all or any part of the said hereditaments, so to be charged as last hereinbefore mentioned, with their appurtenances, to any person or persons whomsoever, for any term or terms of years whatsoever, without impeachment of waste, by way of mortgage, or upon trust to raise the money so to be charged by the usual ways and means, so that the estate or estates so to be limited or appointed, be made to cease, or be made redeemable on full payment of the sum or sums of money to be charged, and the interest thereof, by the person or persons who for the time being shall be entitled to the freehold or inheritance of the premises, so to be limited or appointed.

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and to limit a term for securing the same;

PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, *That* after the decease of the said [*father of gentleman*], or with his consent, during his life; *And* if there shall be any son of the said [*gentleman*] by the said [*lady*], who shall attain the age of twenty-one years, or shall depart this life, leaving issue male of his body living at the time of his decease, or born in due time after; *And* also one or more child or children, who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age, or marry under that age, with such consent as aforesaid, *Then*, and in such case, it shall and may be lawful for the said [*gentleman*], if the said [*lady*] shall depart this life in his lifetime, by any deed or deeds, or instrument or instruments, to be by him sealed, &c. (*as before*), to subject and charge all or any of the manors and other hereditaments, with their rights, members, and appurtenances, to and with the payment of any sum or sums of money for the portion or portions of all and every, or such one or more, exclusively of the other or others of the children of him the said [*gentleman*], by any woman or women with whom he may intermarry after the decease of the said [*lady*], other than and besides an eldest or only son for the time being entitled to the said manors and other hereditaments hereby appointed and released, or intended so to be, for an estate in tail male in possession, or

Power for gentleman, if there shall be younger children of the marriage, to charge hereditaments with any sum not exceeding the sum of —*l.* as portions for them;

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in remainder expectant on the decease of the survivor of them the said [*father of gentleman*] and [*gentleman*], but subject and charged as hereinbefore is mentioned, not exceeding in the whole the sum of pounds, and with interest for the same sums respectively, at any rate not exceeding five pounds for every one hundred pounds for a year, and the same sum of pounds to be an interest vested, or interests vested in, and to be paid to such child or children respectively, at such age, day, or time, or respective ages, days, or times, and if more than one, to be divided between or among them, and to be attended with such provision for their, or any of their advancement or maintenance, and to be subject to such conditions, under such restrictions, and in general in such manner for their, or any of their benefit, as the said [*gentleman*] shall think proper, and shall by any deed or deeds, instrument or instruments, &c. (*as before*), direct or appoint, *And* that for the purpose of raising such portions, and interest for the same, it shall and may be lawful for the said [*gentleman*], by the same or any other deed or deeds, instrument or instruments in writing, so sealed, delivered, and attested as aforesaid, or by his last will and testament in writing, or any codicil or codicils thereto so signed, published, and attested as aforesaid, to limit and appoint all or any part of the hereditaments so to be charged as last hereinbefore mentioned, with their appurtenances, to any person or persons whomsoever, for any term or terms of years whatsoever, without impeachment of waste, by way of mortgage, upon trust to raise the money so to be limited and appointed, so that the same be made to cease, or be made redeemable, on full payment of the sum or sums of money so to be charged, with the interest thereof, by any person or persons who for the time being shall be entitled to the freehold or inheritance of the premises so to be limited or appointed: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for each of them the said [*brothers of gentleman*], as and when by virtue of the limitations hereinbefore contained, he shall respectively be in possession of and entitled to the yearly rents and profits of any of the said manors and other hereditaments hereby appointed and released, or intended so to

and limit a term for securing the same.

Power for the brothers of gentleman to jointure any woman with whom they may marry, with usual powers,

be, by any deed or deeds, instrument or instruments &c. (*as before*), (but subject, and without prejudice, to the uses and estates antecedent to the use or estate of the person respectively making such appointment, or to the powers annexed, relating, or collateral to such antecedent uses or estates, if any such uses, estates, or powers shall be then subsisting and capable of taking effect, or being exercised; and also (subject and without prejudice to the uses and estates, if any, which may be limited in exercise of the said power, or any of them), to limit and appoint unto and to the use of, or in trust for, any woman or women with whom he may marry, for the life or lives of such woman or women respectively, and for her or their jointure or jointures, any annual sum or yearly rent, or annual sums or yearly rents, not exceeding in the whole, in respect of each person exercising this power, the sum of pounds of lawful money of Great Britain and Ireland, to be issuing and payable out of the said manors and other hereditaments hereby appointed, or intended so to be, and for the purpose of securing such annual sums or yearly rent-charges respectively, to limit or appoint to the woman or women respectively, for the benefit of whom such annual sum or yearly rent-charge, or annual sums or yearly rent-charges shall be appointed, usual powers and remedies for recovering and compelling payment thereof respectively by distress and entry, or perception of rents, issues, and profits; *And* also (but subject and without prejudice as hereinbefore is mentioned) to limit and appoint the same premises respectively to any person or persons respectively, for any term or terms of years, for the better securing the due payment of the same respectively, to take effect immediately after the decease of such of them the said [*brothers of gentleman*] as shall limit and appoint the same respectively, as to them the said [*brothers of gentleman*] respectively shall seem meet; but so that every such term of years respectively be made to cease on full payment of the said annual sum or yearly rent-charge, or annual sums or yearly rent-charges thereby respectively secured, and all expenses to be incurred by payment of the same respectively: PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these

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and to limit a term for securing the same.

Proviso that the hereditaments shall no

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be subject at any one time to any greater sum than —*l.* for jointures.

presents, that the said manors and other hereditaments shall not, under and by virtue of these presents, or the powers hereinbefore contained, or any of them, be at any one time subject or liable to the payment of any annual sum or sums for jointure, exceeding in the whole the annual sum of pounds, so that and under these presents, and by virtue or exercise of the aforesaid powers of jointuring, or any of them, the said manors and other hereditaments, or any part or parts thereof, would, in case this present proviso had not been inserted, be charged with a greater annual sum for jointures in the whole than pounds, and the payment of the sum occasioning such excess, or such part thereof as occasions the same during the time of such excess, shall be suspended. (*Powers for brothers to charge premises, with portions for younger children; see commencement, ante, p.* 486; *and the rest of the form, as ante,* 483, 485.)

Power for brothers to portion children.

Power to father of gentleman, and gentleman and first trustees, during minority of persons entitled in remainder, to lease for twenty-one years.

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*father of gentleman*] during his life, and from and after his decease, for the said [*gentleman*], as and by virtue of the limitations hereinafter contained they shall successively and respectively be seised or entitled to the actual freehold of the said manors and other hereditaments hereby appointed and released, or intended so to be, during their respective lives; and also to and for the said [*first trustees*], and the survivor of them, and the executors and administrators of such survivor, from time to time, and at all times, during the minority of any child who by virtue of the limitations aforesaid, shall be entitled to any estate of freehold and inheritance of and in the said manors and other hereditaments, by virtue of any of the limitations aforesaid, by any indenture or indentures to be sealed and delivered by them respectively, in the presence of and attested by two or more credible witnesses, to limit or appoint, by way of demise or lease, all or any part or parts of the said manors and other hereditaments, with their rights, members, and appurtenances, to any person or persons, for any term or terms of years, not exceeding twenty-one years, to take effect in possession and not in reversion, or by way of future interest, so as there shall be reserved in

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every such lease or grant the best or most improved yearly rent or rents, to be incident to the immediate reversion of the hereditaments so to be demised, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or any thing in the nature of a fine, premium, or foregift, for the making thereof; *And* so as there be contained in every such limitation or appointment, by way of demise or lease, a condition of re-entry for nonpayment of the rent or rents thereby respectively to be reserved; and so as the lessee or lessees do execute a counterpart or counterparts thereof respectively, and do thereby covenant for the due payment of the rent or rents thereby to be respectively reserved, and be not by any clause or words exempted from punishment for committing waste, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*first trustees*] and the survivor of them, and the executors or administrators of such survivor, at any time or times hereafter, at the request and by the direction of the said [*father*] and [*gentleman*] during their joint lives, and after the death of such of them as shall first depart this life, then at the request and by the direction of the survivor of them, and after the decease of such survivor, at the request and by the direction of the said [*brother of gentleman*], as and when, by virtue of the limitations hereinbefore contained, they shall be severally seised of and entitled to the actual possession of the manors and other hereditaments hereby appointed and released, or intended so to be, (such request and desire to be testified by some writing under their respective hands and seals, attested by two or more credible witnesses, to dispose of and convey, either by way of absolute sale or exchange, or by way of partition, for or in lieu of other hereditaments to be situated somewhere in that part of Great Britain called England, all or any of the manors and other hereditaments hereby appointed and released, or intended so to be, for such price or consideration in money, or for such recompense or equivalent in other lands, as to them the said [*first trustees*] and the survivor of them, or

Power to the first trustees, at the request of father and gentleman, and survivor, in their lives, and after their decease, to the brothers of gentleman, (testified in writing),

to sell, exchange, or make partition of the hereditaments;

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the executors or administrators of such survivor, shall seem reasonable; *And* that for the purpose of effecting such dispositions or conveyances, it shall and may be lawful to and for the said [*first trustees*] and the survivor of them, or the executors and administrators of such survivor, at such request and by such direction as aforesaid, by any deed or deeds, instrument or instruments in writing, sealed and delivered by them or him, in the presence of and attested by two or more credible witnesses, absolutely to revoke, determine, and make void, all and every or any of the uses, trusts, powers and provisoes, limitations, declarations, and agreements hereinbefore limited and expressed of and concerning the said manors and other hereditaments, or any part or parts thereof; *And* by the same or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct, or appoint any use or uses, trust or trusts, estate or estates of the said hereditaments, or any part or parts thereof, which it shall be necessary or expedient to limit, declare, direct, or appoint, in order to effect such dispositions and conveyances as aforesaid; *And also*, that upon such exchange or partition as aforesaid, it shall and may be lawful to and for the said [*first trustees*] and the survivor of them, and the executors or administrators of such survivor, to give, or receive, or take any sum or sums of money, by way of equality of exchange or partition; *And also*, that upon payment of any money to arise by sale of the said hereditaments, or to be received for equality of exchange or partition, it shall and may be lawful to and for the said [*first trustees*] and the survivor of them, and the executors or administrators of such survivor, to sign and give receipts for the monies for which the said hereditaments shall be so sold, or which shall be received for equality of exchange or partition; *And* that such receipt or receipts shall discharge the person or persons to whom the same shall be respectively given, from the money therein acknowledged or expressed to be received, and from all responsibility for the misapplication, and all obligation of seeing to the application of the same: And it is also hereby agreed and declared, that when any part or parts of the manors and other hereditaments hereinbefore appointed and released,

and for that purpose to revoke the uses hereinbefore limited;

and limit such uses as shall be necessary to effect the purposes intended;

and in order to effect such disposition, it shall be lawful for the trustees to receive any monies, and give receipts for the same.

Agreement that the trustees shall apply monies receiv-

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or intended so to be, shall be so sold for a valuable consideration in money, or any money shall be received for equality of exchange or partition, they the said [*first trustees*] and the survivor of them, and the executors and administrators of such survivor, shall with all convenient speed pay and apply the monies to arise by such sale or sales, or to be received for equality of exchange or partition, in or towards the satisfaction or discharge of the incumbrances (if any) which shall then affect the manors and other hereditaments, and lay out and invest the surplus, if any, of the monies to arise by such sale or sales as aforesaid, or to be received for equality of exchange or partition, in the purchase of other manors, messuages, lands, tenements, and other hereditaments, to be situate somewhere in England, of a clear indefeasable estate of inheritance, or of copyhold hereditaments convenient to be held therewith, or with the said hereditaments hereby appointed and released, or intended so to be, yet so that during the joint lives of the said [*father*] and [*gentleman*], such purchase be made with the consent of both of them, by some writing under both their hands, and so that after the decease of such of them as shall first depart this life, the same shall, during the life of the survivor of them, be made with the consent in writing of such survivor, testified by some writing under his hand, and so that, after the decease of such survivor, the same shall be made with the consent in writing of the person for the time being entitled, under the limitations hereinbefore contained, to the actual freehold of the hereditaments hereby appointed, if such person shall be of full age; but if such person respectively shall be under age, then at the discretion and of the proper authority of his guardian or guardians, during his minority: *And* that they the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, *Do* and shall settle and assure, or cause to be settled and assured, as well the manors and hereditaments so to be purchased, as the manors, lands, and hereditaments to be vested in the said [*first trustees*], or the survivor of them, his heirs, executors, and administrators, in exchange, or by way of partition, as hereinbefore is mentioned, *To such and the same uses*, upon such and the same trusts, and for such and the

ed in discharging incumbrances affecting the premises,

and the surplus in the purchase of other hereditaments.

to be settled, together with the lands received in exchange, to the same uses as are hereinbefore limited;

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same intents and purposes, and with, under, and subject to the same powers, provisoes, conditions, and agreements, as are in and by these presents limited, expressed, declared, and contained, of and concerning the manors and other hereditaments hereby appointed and released, or intended so to be, or as near thereto as the deaths of the parties, and other intervening accidents, will then admit of: *And* further, that until the money arising by such sale or sales, as aforesaid, or to be received for equality of exchange or partition, shall be disposed of in the manner hereinbefore mentioned, it shall and may be lawful to and for the said [*first trustees*], and the survivor of them, and the executors or administrators of such survivor, by and with such consent and approbation as last hereinbefore is expressed and contained, to lay out and invest such sum or sums of money either in the purchase of a competent share or shares in the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England, and to alter, vary, and transfer the said stocks, funds, and securities, for or into other stocks, funds, and securities, as occasion shall require; And it is hereby agreed and declared, that the interest, dividends, and annual produce arising from the said sums of money, stocks, funds, and securities, shall go and be paid and applied to such person or persons, to and for such uses, intents, and purposes, and in such manner, as the rents, issues, and profits of the said manors and other hereditaments to be purchased therewith would go, or be paid or applied, in case such purchase or purchases and settlements, as aforesaid, were then actually made; And it is hereby further declared and agreed between and by the parties to these presents, that the receipt or receipts of the trustee or trustees for the time being, for any sum or sums of money payable to them under the trusts hereinbefore expressed and contained, shall discharge the persons to whom the same shall be given, from the money therein mentioned to be received, and from all responsibility from the misapplication, and all obligation of seeing to the application of the same;(*g*) *And* when and

and until the money shall be so laid out, trustees to invest the same in the funds,

and vary the securities;

and pay the dividends to the person who would be entitled to the rents of the lands purchased.

Declaration that the receipts of the trustees shall be sufficient discharges.

Power to gentleman, and af-

Power to appoint trustees.

(*g*) The powers here inserted are shorter than those sometimes adopted, but they are sufficiently full for all necessary purposes. It

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so often as the said trustees hereby appointed, or to be appointed as hereinafter is mentioned, or any of them, or their or any of their executors, administrators, and assigns, shall happen to die, or be desirous of being discharged of and from, or refuse, or decline, or become incapable to act in the trusts hereby in them respectively reposed, as aforesaid, before the said trusts shall be fully executed, performed, and discharged, then and in such case, and when and so often as the same shall happen, it shall and may be lawful to and for the said [*gentleman*], and after his decease, to and for the said surviving and continuing trustee or trustees, and the executors or administrators of the last surviving or continuing trustee, by any deed or deeds, instrument or instruments in writing, to be by them or him sealed and delivered, in the presence of and attested by two or more credible witnesses, from time to time to nominate, substitute, or appoint any other person or persons, to be a trustee or trustees in the stead or place of the trustee or trustees so dying, or desirous to be discharged, or refusing, declining, or becoming incapable to act as aforesaid; *And* when and so often as any such trustee shall be nominated and appointed, as aforesaid, all the trust estate, monies, and premises, the trustee or trustees whereof shall so die, or desire to be discharged, or refuse, or decline, or become incapable to act, as aforesaid, either solely or jointly, as occasion shall require, shall be thereupon, with all convenient speed, conveyed, assigned, and transferred, so that the same shall and may be vested in the surviving or continuing trustee or trustees of the same trust estate, monies, and premises respectively; and such new or other trustee or trustees, or if there shall be no continuing trustee or trustees of the same trust estate, monies, and premises, then in such new trustees only, *To the uses*, and upon and for the trusts, intents, and purposes hereinbefore expressed and declared of and

ter his decease to the continuing or surviving trustee, to appoint new trustees.

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has been thought that the mere appointment of trustees would empower them to exercise the power of sale and exchange. See 1 Sand. Uses, 439. The proper mode of appointing new trustees under these powers, and the requisite forms, will be given under the title TRUSTEE DEEDS.

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN AND GENTLEMAN.

concerning the said trust estates, monies, and premises, or such of them as shall be then subsisting undetermined, and capable of taking effect; *And* the person or persons so to be appointed as aforesaid, shall have all the powers of the trustee or trustees, in whose room he or they shall be substituted: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the several trustees hereby appointed, as aforesaid, and each and every of them, and the heirs, executors, administrators, and assigns of them, each and every of them, shall be charged and chargeable respectively only for such monies as they respectively shall actually receive, by virtue of the trusts hereby in them reposed, notwithstanding their or any of their signing, or joining in giving and signing, any receipt or receipts for the sake of conformity; and any one or more of them shall not be answerable or accountable for the other or others of them, or for involuntary losses; *And also*, that it shall be lawful for them, with and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to retain and reimburse themselves respectively, and also to allow their respective co-trustees or co-trustee, all costs, charges, damages, and expenses which they, or any of them, can or may suffer, sustain, expend, disburse, be at, or be put unto, in or about the execution of the aforesaid trusts, or in relation thereto: *And* the said [*father of gentleman*] and [*gentleman*], jointly for themselves, their heirs, executors, and administrators, *And* each of them, *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*first trustees*], their heirs and assigns, in manner following, (that is to say); that for and notwithstanding any act, deed, matter, or thing by them the said [*father of gentleman*] and [*gentleman*], or either of them, or any of their ancestors or predecessors in title, made, done, executed, or willingly or knowingly suffered to the contrary (except as appears by these presents), the powers and authorities hereinbefore recited, and hereby exercised, or intended so to be, were well and effectually created by the indentures and recoveries hereinbefore recited, and that the same are now in full force,

Provision for the indemnity and reimbursement of trustees.

Covenant by father of gentleman and gentleman with first trustees, that the powers are good.

and in nowise changed, suspended, or become void or voidable; *And that* for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said [*father of gentleman*] and [*gentleman*] now have in themselves good right, full power, and lawful and absolute authority, to appoint and convey the said manors and other hereditaments hereby appointed and released, or intended so to be, with the appurtenances, unto and to the use of the said [*first trustees*], their heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: *And* that the said manors and other hereditaments and premises hereby appointed and released, or intended so to be, with their appurtenances, shall and may from time to time, and at all times hereafter, remain, continue and be, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore declared of and concerning the same; *And* be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, received and taken accordingly, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by them the said [*father of gentleman*] and [*gentleman*], or their heirs, or of or from or by any person or persons whomsoever, lawfully or equitably claiming or to claim by, from, under, or in trust for them, or any of them, or any of their ancestors; *And* that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged or otherwise by the said [*father of gentleman*] and [*gentleman*], their heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights or titles of or to dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rent, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges,

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN AND GENTLEMAN.

and that they have good right to appoint and convey;

and that the premises shall be to the uses hereinafter declared,

free from incumbrances.

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN AND GENTLEMAN.

debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered by the said [*father of gentleman*] and [*gentleman*], or their heirs, or any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for them, or any of them, or any of their ancestors, or by their acts, means, defaults, or procurements; *And further*, that they the said [*father of gentleman*] and [*gentleman*], and their heirs, and all and every other person and persons having or claiming, or who shall or may hereafter have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said manors and other hereditaments hereby appointed and released, or intended so to be, with their appurtenances, or any of them, or any part thereof, by, from, or under, or in trust for them the said [*father of gentleman*] and [*gentleman*], or any of their ancestors, or their heirs, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the said [*first trustees*], their heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring the said manors and other hereditaments, hereby appointed and released, or intended so to be, and every part thereof, with their appurtenances, unto the said [*first trustees*], their heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*first trustees*], their heirs or assigns, or their counsel in the law, shall be reasonably advised, devised, and required; so as no such further assurance or assurances, contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make and execute the same, and his or their heirs, executors, and administrators' acts and deeds; and so as the

and for further assurance.

party or parties who shall be required to make and execute such further assurance or assurances, be not compelled nor compellable, for the making thereof, to go or travel from his, her, or their usual place or respective places of abode. IN WITNESS, &c.

OF FREEHOLDS ON MARRIAGE, BY FATHER OF GENTLEMAN AND GENTLEMAN.

OF COPYHOLDS.

WITNESSING PART *in a Marriage Settlement, whereby Gentleman covenants to surrender* COPYHOLDS *to Trustees upon Trusts, which will nearest correspond with the Uses declared of Freeholds.*

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreements, and for the considerations aforesaid, he the said [*gentleman*], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their heirs and assigns, that he the said [*gentleman*], or his heirs, and all other necessary and proper parties, shall and will, at the costs and charges of him the said [*gentleman*], his heirs, executors, or administrators, at the next or some subsequent general, or at some special court baron, or customary court, to be held for the manor of [A.], whereof the customary or copyhold hereditaments hereinafter described are holden, or out of the court, upon the request of the said [*trustees*], their heirs and assigns, well and effectually surrender into the hands of the lord or lady, or lords or ladies of the aforesaid manor for the time being, and according to the custom of the said manor; ALL, &c. (*parcels*) with the appurtenances to the same premises belonging or appertaining; *And* all his and their right, title, estate, and interest therein or thereto, *To the use* of the said [*trustees*], their heirs and assigns, ac-

Further witnessing part, whereby gentleman covenants with trustees to surrender copyhold premises to the use of trustees, Upon trusts which will nearest correspond with uses declared of freeholds.

OF COPYHOLDS.

cording to the custom of the said manor of [A.], at the rents, and by the services therefore due and of right accustomed; *But* nevertheless upon such trusts, for such intents and purposes, and under and subject to such powers, provisoes, declarations, and agreements, as will best or nearest correspond with the uses, trusts, limitations, powers, provisoes, declarations, and agreements, hereinbefore limited, expressed, declared, and contained, of and concerning the freehold hereditaments and premises hereby granted and released, or intended so to be, so far as the different nature and tenure of the same estates respectively, and the rules of law and equity, will permit.

OF LEASEHOLDS.

WITNESSING PART *in a Marriage Settlement, whereby Gentleman assigns* LEASEHOLDS *to Trustees, upon Trusts which will nearest correspond with the Uses declared of Freeholds.*

Further witnessing part, whereby gentleman assigns leaseholds.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement, and for the considerations hereinbefore mentioned, HE the said [*gentleman*] hath granted, bargained, sold, assigned, transferred, and set over; *And*, &c. unto the said [*trustees*], their executors, administrators, and assigns,

Habendum,

ALL, &c. *And* all the estate, &c. TO HAVE AND TO HOLD all the said messuages or dwelling houses, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for and during all the rest, residue, and remainder now to come and unexpired of the several and respective terms of years, for which the said premises hereby assigned, or intended so to be, or any of them, now are or is held, (subject to the payment of the rent and rents, and to the performance of the several covenants and agreements reserved and con-

subject to the rents and covenants reserved and contained in the leases thereof.

OF LEASEHOLDS.

tained in the several and respective indentures of lease, under which the same respectively are now held, and which henceforth on the part and behalf of the tenant or lessee are or ought to be paid, done, and performed, *Upon* and for such and the same trusts, ends, intents, and purposes, and with, under, and subject to the same powers, provisoes, and declarations, as are hereinbefore mentioned, expressed, declared, and contained of and concerning the said manors and other hereditaments hereby granted and released, or intended so to be, or as near thereto as the different nature of the estates, and the rules of law and equity, will admit.

Upon such trusts as will nearest correspond.

OF SMALL FREEHOLDS.

MARRIAGE SETTLEMENT *of Freeholds belonging to the Lady, whereby they are conveyed to Trustees, To the use of Lady till Marriage; and after the Marriage, To the use of the Trustees, during the Life of the Gentleman, Upon trust, until he shall commit an Act of* BANKRUPTCY, *&c. to pay Rents to Gentleman; but if he shall commit such Act, then to Lady for her Life; and if he shall survive Lady, Upon trust for his Maintenance, and after his decease, To the use of the Lady for Life; Remainder to the use of Trustees to preserve; Remainder to the use of such Children as the Parents, or the Survivor of them, shall appoint; and in Default of such Appointment, to all the Children in Fee. Usual Provisions, concisely drawn; Proviso, that if there shall be no Children, the Premises shall go to the Survivor of them the said Gentleman and Lady in Fee; and other usual Clauses; with* VARIATIONS *for the Gentleman's Property being conveyed, so as to defeat the operation of the Bankrupt Laws.*

THIS INDENTURE, made the day of

BETWEEN [*lady*] of, &c. of the first part; [*gentleman*] of, Parties.

OF SMALL FREEHOLDS.

&c. of the second part; and [*trustees*] of, &c. of the third part, (*recite the history of the title to the premises shortly*): AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said *gentleman*] and [*lady*]; AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the messuages or tenements and hereditaments, hereinafter described and settled, with their appurtenances, should be assured and limited, *To the uses* and in the manner hereinafter mentioned(*a*). NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, *And* in consideration of the said intended marriage, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*lady*] paid, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged); SHE the said [*lady*], with the privity and approbation of the said [*gentleman*], (testified by his being a party to, and sealing and delivering these presents), *Hath* bargained, sold, released, and confirmed, *And* by these presents *Doth* bargain, sell, release, and confirm unto the said [*trustees*], (in their actual possession, &c.), and their heirs, ALL THAT, &c. TO HAVE AND TO HOLD the said messuages or tenements, and all and singular other the premises hereby granted and released, or intended so to be, with the appurtenances, unto the said [*trustees*] and their heirs, *To the uses* following, (that is to say); *To the use* of the said [*lady*] and her heirs, until the solemnization of the said intended marriage, and after the solemnization thereof, *To the use* of the said [*trustees*], their executors, administrators, and assigns, during the life of the said [*gentleman*], *In trust* by the usual ways and means to preserve the contingent remainders hereinafter limited; *And upon this further trust*, that they the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, until the said [*gentleman*] shall assign (*b*), charge, or otherwise dispose

Agreement for marriage.

Agreement to settle property.

Witnessing part, whereby lady conveys

to trustees,

Parcels.

Habendum,

To the use of lady until marriage, and after marriage to trustees during gentleman's life, to preserve contingent remainders, and upon trust until gentleman shall commit some act assigning over the property, to pay the rents to him;

Lady's fortune.

(*a*) If the gentleman have a fortune, the agreements for its settlement, and the deeds effecting the settlement, should here be recited. See *ante*, p. 359, 375, 400, 401.

(*b*) It has before been seen, that the husband's property cannot be

of the said hereditaments and premises, or the rents and profits thereof, by way of anticipation or attempt, or agree so to do, or shall do some act, whereby the said rents and profits, if payable to himself, would become vested in some other person or persons, or become bankrupt or insolvent, pay the said rents and profits to the said [*gentleman*], for his own proper use and benefit. *But* if the said [*gentleman*] shall assign, charge, or otherwise dispose of the said hereditaments and premises, or the rents and profits thereof, by way of anticipation, or attempt or agree so to do, or shall do some act, whereby the said rents and profits, if payable to himself, would become vested in some other person or persons, or become bankrupt or insolvent, *Then upon the*

b ut if he shall do such act,

Upon trust, during joint

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settled so as to defeat the operation of the bankrupt laws; but that the lady's property may be so settled, see *ante*, p. 329. But it has also been seen, that the gentleman's property may be so settled if he obtain the property of lady to an equal amount, see p. 329, and if such a settlement is intended as a consideration for the lady's fortune. If, therefore, this be the intention of the parties, the following recitals should be introduced:

What property of the gentleman may be settled so as to defeat the operation of the bankrupt act.

(*First recite the history of the title of the premises to be settled, and then the agreement for the marriage.*) "AND WHEREAS on the treaty for the said marriage, it was agreed, that the fortune or portion of the said [*lady*], amounting to the sum of pounds, should be paid or made over to the said [*gentleman*], and that in consideration thereof he should convey and settle the said hereditaments and premises hereinafter described, with their appurtenances, to the said [*trustees*], to the uses, upon the trusts, and in the manner hereinafter mentioned: AND WHEREAS the said fortune or portion of the said [*lady*], hath this day been paid over to the said [*gentleman*], as he doth hereby admit and acknowledge."

And in the witnessing part, say,

"In consideration of the said intended marriage, and also in consideration of the said fortune or portion of the said [*lady*], so paid over to the said [*gentleman*], as hereinbefore is mentioned, HE the said [*gentleman*], &c."

The uses and trusts may then be as above.

OF SMALL FREEHOLDS.

lives of gentleman and lady, for such purposes as lady shall appoint;

trusts following, (that is to say); *Upon trust* that they the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, do and shall thenceforth, during the joint lives of the said [*gentleman*] and [*lady*], pay, apply, and dispose of the said rents and profits to such person or persons, and for such intents and purposes only, as the said [*lady*], notwithstanding her said intended coverture, and as if she were sole and unmarried, shall from time to time, by any writing or writings signed by her with her own hand, direct or appoint, *And*

and in default of appointment, into her own hands;

in default of, and until such direction or appointment, into the proper hands of the said [*lady*], for her sole and separate use and benefit, exclusively of the said [*gentleman*], her intended husband, and without being in anywise subject or liable to his debts, controul, interference, or engagements; (*and her receipts to be sufficient discharges, ante, p.* 413); *And upon this further trust*, that if the said [*gentleman*]

and if gentleman shall survive lady, upon trust to pay the rents for the benefit of gentleman and his issue;

shall survive the said [*lady*], then, and in such case, they the said [*trustees*], and the survivor of them, and the heirs or assigns of such survivor, do and shall, during the remainder of the life of the said [*gentleman*], from time to time, pay, apply, and dispose of the said rents and profits in such manner, for the maintenance and support, or otherwise for the benefit of the said [*gentleman*], and his issue by the said [*lady*], as the said [*trustees*] shall think proper; *And*

and after his decease, to the lady for life;

after the decease of the said [*gentleman*], the said hereditaments and premises, with their appurtenances, shall remain and be *To the use* of the said [*lady*], during her life; and after the determination of that estate by forfeiture, or otherwise, in her lifetime, *To the use* of the said [*trustees*], their executors, administrators, and assigns,

remainder to trustees to preserve contingent remainders;

during the life of the said [*lady*], *In trust* for her, and by the usual ways to preserve the contingent remainders hereinafter limited; *And*

remainders to the children, as parents shall appoint.

immediately after the estate of the said [*lady*], *To the use* of all and every, or such one or more, exclusively of the others or other of the children or child, or remoter issue of the said [*gentleman*] by the said [*lady*], at such age or ages, days, or times, for such estate or estates, interest, or interests, and if more than one, in such shares and proportions, and either absolutely or conditionally subject to such charges, conditions, limitations and restrictions

over, to, or in favour of any other or others of the children, or remoter issue, as the said [*gentleman*] and [*lady*] shall from time to time, during their joint lives, by any deed or deeds, instrument or instruments in writing, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, from time to time direct or appoint, and so far as any such direction or appointment, if incomplete, shall not extend, *To the use* of all and every or such one or more exclusively of the others or other of the said children, or remoter issue of the said [*gentleman*] by the said [*lady*], at such ages, days, or times, for such estate or estates, interest or interests, and if more than one, in such parts, shares, and proportions, and either absolutely or conditionally, and subject to such charges, limitations over, and restrictions to or in favor of any other or others of the said children, or remoter issue, as the survivor of them the said [*gentleman*] and [*lady*] shall from time to time, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, or by his or her last will and testament in writing, to be signed and published in the presence of the like number of witnesses, direct or appoint; and in default of such last mentioned direction or appointment, and so far as any such last mentioned direction or appointment, if incomplete, shall not extend, *To the use* of all and every the children or child of the said [*gentleman*] by the said [*lady*], their, his, and her heirs and assigns for ever, and if more than one, in equal shares as tenants in common; but no child taking under any appointment to be made in exercise of the aforesaid powers, or either of them, shall be entitled to any share of the unappointed part of the said hereditaments and premises, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly: PROVIDED ALWAYS, that if any one or more of the children of the said [*gentleman*], by the said [*lady*], being a son or sons, shall die under the age of twenty-one, or, being a daughter or daughters, shall die under that age, without being or having been married, then as well the original share or shares of the child or children so dying, as the share or shares which by virtue of this present proviso shall have survived or accrued to

and in default of such appointment, as survivor shall appoint;

and in default of such last-mentioned appointment, To the use of all the children in fee;

but subject to hotchpot.

Provision for surviving and accruing shares;

OF SMALL FREEHOLDS.

him, her, or them, of and in the said hereditaments and premises, shall remain and be *To the use* of the other or others of the said children, his, her, or their heirs and assigns for ever, and if more than one, in equal shares as tenants in common: PROVIDED ALWAYS, that if there shall be no child of the said [*gentleman*] by the said [*lady*], or being such, he, she, or they, being a son or sons, shall die under the age of twenty-one years, or being a daughter or daughters, shall die under that age, without being or having been married, then after the decease of such one of them the said [*gentleman*] and [*lady*], as shall first happen to die, and the failure of such issue as aforesaid, the said hereditaments and premises shall remain and be to the use of the survivor of them the said [*gentleman*] and [*lady*], his and her heirs and assigns for ever: PROVIDED ALWAYS and it is hereby agreed and declared, that after the decease of the survivor of them the said [*gentleman*] and [*lady*], and during such time as their said children or any of them, being a son or sons, shall be under the age of twenty-one years, and being a daughter or daughters, shall be under the said age and unmarried, the said [*trustees*], and the survivor of them, his heirs, executors, and administrators, shall receive the rents and profits of the premises to which each such child shall, for the time being, be entitled under the limitations hereinbefore contained, and apply the same for and towards his or their benefit. (*Advancement clause, as ante,* 420. *Power to lease, as ante,* 424. *And of sale or exchange, as ante,* 435. *Power to change trustees, and clauses for their indemnity and reimbursement, as ante,* 445—7. *Covenants for title, as ante,* 447—9.) IN WITNESS, &c.

and if there shall be no child of the marriage,

the premises shall go to the use of the survivor of them the gentleman and lady in fee.

Provision for maintenance of children.

MARRIAGE SETTLEMENT *of a Sum of* STOCK, *the Property of the Gentleman* (*a*), *reciting the Possession and Transfer thereof, into the Name of Trustees; Declaration, that the Trustees shall stand possessed thereof, upon trust to continue the same on the present Security, or vary the same, and pay the Interest to Gentleman for life, to Lady for life in Bar of Dower, and on the Decease of the Survivor of them, to the Children of the Marriage, as Parents, or the Survivor, shall appoint; Provisions for Hotchpot, Maintenance, Accumulation, and Advancement, and if no Children, to Gentleman absolutely; Power to convert and re-convert; Power to change Trustees, and Provisions for their Indemnity and Reimbursement.* OF STOCK.

THIS INDENTURE, made the day of : Parties.
BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; and [*trustees*] of, &c. of the third part; WHEREAS a marriage hath been agreed upon between the said [*gentleman*] and [*lady*], and is intended to be shortly had and solemnized; AND WHEREAS the said [*gentleman*], is possessed of, or entitled to the sum of pounds, three per cent. consolidated bank annuities, and the same is now standing in his name, in the books of the governor and company of the bank of England; *And* it hath been agreed, that the said sum of pounds, three per cent. consolidated bank annuities, should be transferred into the name of the said [*trustees*], upon the trusts, and for the intents and purposes hereinafter declared concerning the same: AND WHEREAS the said [*gentleman*], in pursuance of the said

Agreement for marriage.

Possession of sum of stock by gentleman.

Agreement to transfer the same into the name of trustees, and transfer accordingly.

(*a*) If the stock belong to the lady, the provisions will be precisely similar, except that the ultimate trust should be for the benefit of the lady. Lady's property.

OF STOCK.

agreement, hath, at or before the execution of these presents, transferred into the name of the said [*trustees*], in the books of the governor and company of the bank of England, the said sum of pounds, three per cent. consolidated bank annuities, and the same is now standing in their names, as they do hereby admit and acknowledge: Now

Testatum, whereby it is declared, that the trustees shall stand possessed of stock, upon the trusts hereinafter contained, (that is to say);

THIS INDENTURE WITNESSETH, That in pursuance and performance of the said agreement, and in consideration of the said intended marriage, *It* is hereby agreed and declared between and by the parties hereto, that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, or assigns of such survivor, shall stand possessed of and interested in the said sum of pounds, three per cent. consolidated bank annuities, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, agreements, and declarations, hereinafter declared and contained of and concerning the same, (that is to say);

In trust for gentleman until marriage, and after the marriage, either to continue the same in its present investment, or

In trust for the said [*gentleman*], his executors, administrators, and assigns, until the said intended marriage shall be had and solemnized, and from and after the solemnization thereof, upon trust, that the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall either continue the said sum of pounds, three per cent. consolidated bank annuities, in its actual state of investment, or do and shall call in and convert the same into money; and do and shall lay out and invest the money arising thereby, in their or his names or name, in some or one of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales;

to vary the securities,

And do and shall alter and vary the same stocks, funds, and securities into other stocks, funds, and securities, of the like nature, as occasion shall require, or they or he shall think fit;

such variation during the lives of gentleman and lady, to be with their assent, and after their deaths, at the discretion of the trustees.

AND it is hereby agreed and declared, that every such laying out and investment, alteration, or variation, shall be made with the consent in writing of the said [*gentleman*] and [*lady*], during their joint lives, and of the survivor of them, during his or her life, and after the decease of both of them the said [*gentleman*] and [*lady*], at the discretion, and of the proper authority of the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or

OF STOCK.

assigns of such survivor; AND it is hereby agreed and declared between and by the said parties to these presents, that the said [*trustees*], and the survivors or survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of and interested in the aforesaid trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same (that is to say); *Upon trust* that they the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, do and shall pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, to, or permit and authorize the same to be received by the said [*gentleman*] or his assigns, during his life, for his and their own use and benefit; *And* after the decease of the said [*gentleman*] do and shall pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, to, or permit the same to be received by the said [*lady*] or her assigns, during her life, for her and their own use and benefit, and in lieu, bar, and satisfaction of all dower, free-bench, or other estate to which she may be entitled either at common law or by custom, in or out of any lands or hereditaments of which the said [*gentleman*] shall at any time during the joint lives of himself and the said [*lady*], be seised for an estate of freehold or inheritance; *And* from and immediately after the decease of the survivor of them the said [*gentleman*] and [*lady*], the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, shall remain and be, *In trust* for all and every, or such one or more exclusively of the others or other of the children or child of the said [*gentleman*] by the said [*lady*], with such provisions for their respective maintenance, education, and advancement, and at such age, day, or time, or respective ages, days, or times, and if more than one, in such parts, shares, and proportions, and charged with such annual sums of money and limitations over, for the benefit of the said

Declaration that trustees shall stand possessed thereof,

Upon trust to pay the interest to gentleman for his life,

and after his death to lady, in bar of her dower;

and after the decease of the survivor of them,

In trust for all the children, in such manner

OF STOCK.

children, or some or one of them, and upon such conditions, and with such restrictions, and in such manner, as the said [*gentleman*] and [*lady*], by any deed or deeds, or instrument or instruments in writing, to be by both of them sealed and delivered in the presence of and attested by two or more credible witnesses, shall from time to time jointly direct or appoint; *And* in default of such joint direction or appointment, and so far as any such joint direction or appointment, if incomplete, shall not extend, then as the survivor of them the said [*gentleman*] and [*lady*], by any deed or deeds, or instrument or instruments in writing, to be by him or her sealed and delivered in the presence of and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto in writing, or any writing in the nature of or purporting to be a will or codicil, to be by him or her signed and published in the presence of and attested by the like number of credible witnesses, shall, from time to time, direct or appoint; *And* in default of such last mentioned direction or appointment, and so far as any such last mentioned direction or appointment, if incomplete, shall not extend, *In trust* for all and every the children and child of the said [*gentleman*], by the said [*lady*], who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age, or marry under that age with the consent of her or their parent or parents, or guardian or guardians for the time being; and to be divided between or amongst the said children, if more than one, in equal shares as tenants in common, and if there shall be but one such child, then the whole to be in trust for such one or only child; *But* no child taking under any appointment to be made in exercise of the aforesaid powers, or either of them, shall be entitled to any share of the unappointed part of the said trust monies, stocks, funds and securities, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that after the decease of the survivor of them, the said [*gentleman*] and [*lady*], and until the whole of the said trust monies,

as gentleman and lady shall by deed, sealed and delivered in the presence of two witnesses, appoint; and, in default of such appointment, as survivor shall by deed or will appoint;

and in default of such last mentioned appointment,

In trust for all the children of the marriage who, being sons, shall attain 21, or, being daughters, shall attain that age or marry first;

but no child to be entitled to any share without bringing his appointed share into hotchpot.

Provision for the maintenance of the children,

stocks, funds, and securities, shall become vested in such children or child as aforesaid, the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall receive the interest, dividends, and annual produce thereof, or of so much thereof as shall not for the time being have become vested; and shall apply the same, or so much thereof as they or he shall think fit, for or towards the maintenance and education of the children or child, for the time being entitled thereto in expectancy, *And* shall accumulate at compound interest, so much of the same interest, dividends, and annual produce, as shall not for the time being be required for such maintenance and education as aforesaid, in their or his names or name, in any of the stocks, funds, or securities hereinbefore mentioned; and shall alter and vary the said stocks, funds, or securities in or upon which such accumulations shall be invested, for or into other stocks, funds, or securities of the like nature, as occasion shall require, or they or he shall think fit; *And* the accumulations which shall be so made, shall belong to the person or persons who shall ultimately become entitled to the fund, from whence such accumulations shall have proceeded. PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties to these presents, that it shall be lawful for the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, with the consent in writing of the said [*gentleman*] and [*lady*], during their joint lives, and the life of the survivor of them, during his or her life; and after the decease of such survivor, at their or his own discretion, to raise and apply for or towards the advancement or preferment in the world of any of the children of the said [*gentleman*] by the said [*lady*], all or any part of his or her share, or expectant share, of and in the said trust monies, stocks, funds, and securities, under the trusts hereinbefore declared and contained of and concerning the same, notwithstanding such share shall not then have become vested or payable under or by virtue of the said trusts. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that if there shall be

OF STOCK.

and the accumulation of the residue of the interest of the shares.

Provision for the advancement of the children;

and if there shall be no children of the marriage who shall take,

OF STOCK.

no child of the said [*gentleman*] by the said [*lady*], who under the trusts hereinbefore declared shall become entitled to the said trust monies, stocks, funds, and securities, *Then* and in such case, after the decease of the said [*lady*], and such failure of issue as aforesaid, the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have been applied or disposed of under the trusts or provisions hereinbefore declared and contained, shall go, remain, and be, *In trust* for the said [*gentleman*], his executors, administrators, and assigns, for his and their absolute use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that the said [*trustees*] or the survivors and survivor of them, or the executors, administrators, or assigns of such survivor, shall and may, at the request in writing of the said [*gentleman*] and [*lady*] during their joint lives, and of the survivor of them, during his or her life, lay out and invest all or any part of the aforesaid trust monies, stocks, funds, or securities, or the produce thereof respectively, in the purchase of lands and hereditaments in England, Scotland, or Wales, held either in fee simple, or for any long and absolute term of years, of which years at the least shall at the time of such lease remain unexpired; *And* shall and may at the like request, or after the death of the said [*gentleman*] and [*lady*], at their or his own discretion, and of their or his own authority, convert such lands and hereditaments into money by a sale thereof, and shall stand and be possessed of the money arising from such sale, upon the same or the like trusts as are hereinbefore declared of the money which shall have been invested in the purchase of the lands and hereditaments for the time being sold; and shall and may from time to time, until such sale, make such leases of the said lands and hereditaments, at full and improved rents, for any term or number of years not exceeding fourteen years, as the said [*gentleman*] and [*lady*], or the survivor of them, shall require, *And* after the decease of such survivor, as the said [*trustees*], or the survivor or survivors of them, or the executors, administrators, or assigns of such survivor, shall think fit; *And* also shall in the

the trust-monies shall be in trust for gentleman absolutely.

Proviso that trustees may, with the consent of gentleman and lady,

invest trust-monies in the purchase of lands;

and reconvert lands into money by the sale of the lands, and stand possessed of the monies upon the trusts hereinbefore declared;

and until the sale, make leases of the lands,

and apply the rents as the di-

mean time, and until such sale, apply the rents and income of the lands and hereditaments which shall be so purchased, in the same manner, and for the benefit of the same persons, and in the same proportions, as the interest of the money to be invested in such purchases as aforesaid, would have been applicable in case the same purchases had not been made; *And* shall in all other respects stand and be seised of and interested in the lands and hereditaments, which shall be purchased from time to time as aforesaid, upon, under, and subject to the same trusts, as if the said lands and hereditaments were personal estate, and so and in such manner as that on a sale of the said lands and hereditaments, or any of them, the person or persons who shall become the purchaser or purchasers thereof shall not be under any obligation to see to the application of the purchase money, or be answerable or accountable for the misapplication or nonapplication of the same, or any part thereof: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that the receipt and receipts in writing of the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, for any money payable to them or him by virtue of these presents, shall effectually discharge the person or persons paying the same from being answerable or accountable for the misapplication or nonapplication of the money in such receipt or receipts expressed to have been received, or from being obliged to see to the application thereof: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that if the trustees hereby appointed, or to be appointed as hereinafter is mentioned, or any of them, or the executors or administrators of any of them, shall die, or refuse, or decline, or become incapable to act in the trusts aforesaid, before the said trusts shall be fully executed and performed, *Then*, and in every such case, it shall be lawful for the said [*gentleman*] and [*lady*], during their joint lives, and after the decease of either of them, for the survivor of them, during his or her life, and after the decease of such survivor, for the surviving or continuing trustees or trustee of these presents, or the executors or administrators of the last surviving

OF STOCK. dividends would have gone,

and hold the same as personal estate.

Proviso that the receipts of trustees shall be sufficient discharges.

Power to change trustees.

OF STOCK.

trustee, by deed to nominate and appoint any other person or persons to be a trustee or trustees in the stead of the trustee or trustees so dying, or refusing, or declining, or becoming incapable to act as aforesaid; *And* that immediately upon the appointment of any such new trustee or trustees, the said trust monies and premises shall be duly assigned and transferred to, or otherwise vested in such new trustee or trustees, either solely, or jointly with the then surviving or continuing trustee of these presents, upon the trusts hereinbefore declared; *And* that every such new trustee shall have the same powers and authorities as the trustee in whose place he shall be appointed: AND it is hereby agreed and declared, that the trustees hereby appointed, or to be appointed, as hereinbefore is mentioned, shall be answerable for such monies only as they respectively shall actually receive, and shall not be answerable the one for the other or others of them, or for signing receipts for the sake of conformity, or for any involuntary loss; and that it shall be lawful for them, out of the trust monies and premises, or any monies which shall come to their hands by virtue of these presents, to reimburse themselves, and allow their co-trustee or co-trustees all their costs and expenses in discharge of the trusts hereby reposed in them, or in any wise in relation thereunto. IN WITNESS, &c.

Provision for their indemnity and reimbursement.

MARRIAGE SETTLEMENT OF A SUM OF MONEY *belonging to Lady: Recital of Possession thereof, and Payment to Trustees: Declaration that Trustees shall stand possessed thereof, upon Trust to invest the same, and vary the Securities, and stand possessed thereof, upon Trust for the Separate Use of Lady, and after her Death, upon Trust for all the Children equally, with usual Clauses and Provisions.* OF A SUM OF MONEY.

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; and [*trustees*] of, &c. of the third part. WHEREAS a marriage hath been agreed upon and is intended to be shortly had and solemnized, between the said [*gentleman*] and [*lady*]: AND WHEREAS upon the treaty for the said intended marriage, it was (amongst other things) agreed, that a sum of pounds of lawful money of Great Britain and Ireland, of or to which the said [*lady*] is possessed or entitled, should be paid to the said [*trustees*], and be held by them upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same: AND WHEREAS in pursuance and part performance of the said agreement, the said [*lady*] hath this day, with the privity and approbation of the said [*gentleman*], (testified by his being a party to and sealing and delivering these presents,) paid to the said [*trustees*] the said sum of pounds, of or to which she is so possessed or entitled as aforesaid, as they the said [*trustees*] do hereby respectively admit and acknowledge. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of

Parties.

Agreement for marriage.

Agreement that a sum of —*l.* should be paid by lady to trustees upon the trusts hereinafter-mentioned:

Payment accordingly.

Testatum, whereby it is declared that the trustees

OF A SUM OF MONEY.

shall stand possessed thereof,

the said intended marriage, *It is hereby agreed and declared* between and by the said parties to these presents, that the said [*trustees*], their executors, administrators, and assigns, shall and will stand and be possessed of and interested in the said sum of pounds, which has been so paid to them the said [*trustees*] by the said [*lady*] as hereinbefore is mentioned, *Upon* the trusts and in manner following (that is to say); *In trust* for the said [*lady*], her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; *And* from and immediately after the solemnization thereof, *Upon trust* that they the said [*trustees*] or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall lay out and invest the same sum of pounds, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest upon government securities, or real securities, in England or Wales, or otherwise as the said [*lady*] shall by any writing under her hand, request or direct; and do and shall, at the request and by the direction in writing of the said [*lady*], during her life, and after her decease, at their and his own discretion, alter and vary the same stocks, funds, and securities, for or into other stocks, funds, and securities of the like nature, as occasion shall from time to time require; and do and shall stand and be possessed of and interested in the said trust monies, so to be laid out and invested as aforesaid, and the stocks, funds, and securities, in or upon which the same shall for the time being be invested, and the interest, dividends, and annual produce thereof, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, and to such person and persons, as the said [*lady*] shall, notwithstanding her said intended coverture, and whether she shall be covert or sole, by any deed or deeds, or instrument or instruments in writing, to be by her sealed and delivered, in the presence of, and attested by, two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto in writing, or any writing in the nature of, or purporting to be a will or codicil, to be by her respectively signed and published, in the presence of,

in trust for lady until marriage; and after the marriage,

Upon trust to invest the same

as lady shall direct,

and vary the securities,

and stand possessed thereof,

upon such trusts as lady shall appoint;

OF A SUM OF MONEY.

and attested by the like number of credible witnesses, from time to time direct or appoint, and in default of, and until such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, (and subject thereto) into the proper hands of her the said [*lady*] for her own sole and separate use and benefit, exclusively and independently of the said [*gentleman*], or any future husband with whom she may hereafter intermarry, and without being in anywise subject to his debts, control, interference or engagements; *And* the receipt or receipts in writing of the said [*lady*], or of such person or persons as she shall appoint to receive the said interest, dividends, or annual produce, or any part thereof, shall, notwithstanding the said intended or any future coverture of the said [*lady*], and whether she shall be covert or sole, be a good and effectual discharge, or good and effectual discharges, for the monies in such receipt or receipts expressed or acknowledged to be received; *And* from and immediately after the decease of the said [*lady*], the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, shall remain and be *In trust* for all and every the children and child of the said [*lady*] by the said [*gentleman*], who being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age, or marry under that age with the consent of her or their parent or parents, or guardian or guardians for the time being, and shall be divided between or amongst the said children (if more than one), in equal shares as tenants in common; but if there shall be but one such child, then the whole to be in trust for such one or only child. (*Provisoes for maintenance, accumulation, and advancement, as ante, p.* 508, 509.) PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that if there shall be no child of the said [*lady*] by the said [*gentleman*], who shall become entitled to the said trust monies, stocks, funds, and securities, under the trusts hereinbefore declared, then, and in such case, after the decease of the said [*lady*], and such failure of her issue as aforesaid, the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce

and in default of appointment, to separate use of lady,

and her receipts to be sufficient discharges;

and after her decease, trust monies to remain in trust for all the children of the marriage, who, being a son, shall attain 21, or, being a daughter, shall attain 21, or marry under that age with consent, equally;

and if but one, the whole to that one;

and if there shall be no child,

the trust monies shall go to the next of kin of the wife.

OF A SUM OF MONEY.

thereof, or so much thereof respectively as shall not have been applied or disposed of under the trusts and provisions hereinbefore declared and contained, shall remain and be *In trust* for the person or persons who, under the statutes made for the distribution (*a*) of the personal estate of intestates, would then be entitled to the personal estate of the said [*lady*], in case she, having survived the said [*gentleman*], had died possessed of the same estate; and shall be divided between or amongst the same persons respectively, if more than one, in the shares and proportions in which the same would have been divisible between or

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"Next of kin."

(*a*) Where personal estate is limited in a marriage settlement to the wife's next of kin, it is now fully decided that these words must be construed to mean "kindred by blood;" and that, therefore, the husband shall not take the property under these words; *Watt* v. *Watt*, 3 Ves. 244; *Bailey* v. *Wright*, 18 Ves. 49; 1 Swans. 39; 1 Wils. 15, S. C.; and it will be the same where a power is given to the wife to appoint to her next of kin. 14 Ves. 382. And see *Smith* v. *Campbell*, 19 Ves. 400. *Pope* v. *Whitcombe*, 3 Meriv. 689. *Brandon* v. *Brandon*, 3 Swanst. 312. But these words may admit of a different construction in a will, where, judging from the whole instrument, there appears to be an intention that the husband should take. *Garrick* v. *Camden*, 14 Ves. 382.

"Executors or administrators of the wife."

Where the limitation is to the executors or administrators of the wife, if the husband be appointed her executor, or administer to her, then he will be entitled to take the property limited under this description. 15 Ves. 537.

So, also, the wife will not take under the description of the husband's "next of kin" or relations. *Nichols* v. *Savage*, cit. 18 Ves. 53. *Garrick* v. *Camden*, 14 Ves. 376. *Davies* v. *Bayley*, 1 Ves. sen. 84. *Worsely* v. *Johnson*, 3 Atk. 758. If the widow be clothed with the character of the personal representative of the husband, she may take under that description, if a contrary intention is not apparent in the instrument in which the limitation is contained. *Bailey* v. *Wright*, 18 Ves. 49.

Under a limitation in a settlement "to the use of the nearest of kin in equal degree to the said Diana at the time of her decease, without issue, of the name of Brewer," it was held, that a person who at the death of Diana was her next of kin of the persons born with the surname of Brewer, but who was then married to a Mr. Wright, could not take under the description in the settlement. *Doe* v. *Plumptre*, 3 B. & A. 174.

amongst them, if the same had been divisible under or or by virtue of the said statutes. (*Trustees' receipts to be sufficient discharges, and usual trustee clauses, as ante, p.* 511, 512.) IN WITNESS, &c. OF A SUM OF MONEY.

CONVEYANCE *of* FREEHOLDS *by Father of Lady to Trustees, upon* TRUST TO SELL *and stand possessed of Proceeds of Sale, upon trust, to pay all Costs and Expenses, and then* TO SET APART *the Sum of Four Thousand Pounds, upon the Trusts declared by another Indenture (the next precedent), and to pay the Residue to Father of Lady;* PROVISO, *that Rents shall be paid upon the Trusts declared by the other Indenture;* POWER *to the Trustees to Lease, until the Sale; usual Clauses, with* VARIATIONS, *for the whole Proceeds of the Sale being settled.* (See the two next Precedents.) CONVEYANCE TO TRUSTEES, UPON TRUST TO SELL.

THIS INDENTURE made the day of BETWEEN [*father of lady*] of, &c. of the first part; [*gentleman*] of, &c. of the second part; [*lady*] of, &c. spinster, daughter of the said [*father of lady*], by [M.] his wife, of the third part; and [*trustees*] of, &c. of the fourth part; WHEREAS the said [*father of lady*], is seised or entitled in fee simple in possession, of or to the manors, messuages, lands, tenements and hereditaments, hereinafter mentioned, and intended to be hereby released, or otherwise assured, with their rights, members, and appurtenances; AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said [*gentleman*] and the said [*lady*]; *And* upon the treaty of the said intended marriage, it was (amongst other things) agreed, that the said manors, messuages, lands, tenements and hereditaments, of or to which the said [*father of lady*], Parties. That father of lady is seised of premises. That marriage has been agreed upon. Agreement that the premises should be conveyed to trustees, upon trusts hereinafter mentioned.

CONVEYANCE TO TRUSTEES, UPON TRUST TO SELL.

is seised or entitled, as hereinbefore is mentioned, should be conveyed unto, and to the use of the said [*trustees*], their heirs and assigns, upon the trusts hereinafter declared concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*], to the said [*father of lady*] paid, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), HE the said [*father of lady*], with the privity and approbation of the said [*gentleman*] and [*lady*], (testified by their being parties to, and sealing and delivering of these presents,) *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents, *Doth* grant, bargain, sell, release, and confirm, unto the said [*trustees*], (in their actual possession, &c.) (*reference to lease for a year*), and their heirs, ALL, &c. *Together* with all houses, &c. (*general words for manors*), *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND HOLD the said manors, messuages or tenements, lands, hereditaments, and all and singular other the premises hereby released, or otherwise assured, or intended so to be, with their and every of their appurtenances, unto the said [*trustees*], their heirs and assigns, to the following uses, (that is to say); *To the use* of the said [*father of lady*], until the solemnization of the said intended marriage; and after the solemnization thereof, *To the use* of the said [*trustees*], their heirs and assigns, but nevertheless upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and declared of and concerning the same, (that is to say); *Upon trust*, that they the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, *Do* and shall, with all proper speed, at such price or prices as they or he shall think proper, absolutely sell and dispose of the said manor, messuages, or tenements, lands, hereditaments and premises, either altogether in one lot, or in several lots, and either by public auction or private contract, or partly by public auction and partly by private contract, and in such and so many lots as they or he shall

Testatum, whereby father of lady, with privity of gentleman and lady, conveys

parcels.

Habendum,

to the use of father of lady, until the solemnization of the marriage;

remainder to the use of the trustees in fee,

upon trust to sell the same;

think proper, with liberty, if they or he shall think fit, to buy in the said premises, or any part thereof, and to resell the same by public auction or private contract, without being liable to answer for any loss of price by such resale; *And* do and shall convey and assure the said premises to the purchaser and purchasers thereof, or to such uses, and in such manner as he, she, or they shall direct or appoint; *And* for effecting any such sale and sales, do and shall enter into, make, and execute all such contracts, agreements, acts, deeds, conveyances, and assurances, as to them the said [*trustees*] or the survivor of them, or the heirs and assigns of such survivor, shall seem necessary and proper; AND it is hereby agreed and declared between and by the parties to these presents, that all the sales, contracts, agreements, acts, deeds, conveyances, and assurances which shall be had, entered into, and made, in pursuance of these presents, shall during the life of the said [*father of lady*] be had, entered into, and made, with his consent in writing, and shall after his decease be had, entered into, and made, at the discretion, and of the proper authority of the said [*trustees*] and the survivor of them, and the heirs and assigns of such survivor; AND it is hereby agreed and declared, that the receipt or receipts of the said [*trustees*], and the survivor of them, his executors and administrators, shall effectually discharge the person or persons paying the monies arising from such sale or sales as aforesaid, from being answerable or accountable for the misapplication or nonapplication, or from being obliged or concerned to see to the application of the monies in such receipt or receipts expressed, or acknowledged to have been received; AND *it is hereby agreed and declared* between and by the parties to these presents, that the said [*trustees*] and the survivor of them, and the heirs and assigns of such survivor, shall, with and out of the monies arising from such sale or sales, in the first place, pay and reimburse themselves and himself, all the costs, charges, and expenses that they or he shall incur or sustain, in carrying the trusts hereby created into execution; *And* in the next place, do and shall (*a*)

CONVEYANCE TO TRUSTEES, UPON TRUST TO SELL.

and for effectuating such sale enter into all necessary contracts,

to be made with the consent in writing of father of lady;

and after his decease, at the discretion of trustees, whose receipts shall be sufficient discharges to purchaser.

Declaration that trustees shall stand possessed of monies,

In trust, in the first place, to pay all costs and expenses,

and in the next place, set apart

(*a*) If the whole of the proceeds of the sale, after paying the expenses of sale, are to be settled, say,

" And do and shall stand possessed of the residue of the

Where the whole proceeds of sale are settled.

CONVEYANCE TO TRUSTEES, UPON TRUST TO SELL.

the sum of —*l.*, and stand possessed thereof upon the trusts declared by another indenture (meaning the next precedent),

appropriate and set apart the sum of four thousand pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, to be computed from the solemnization of the said intended marriage, and stand and be possessed of and interested in the said sum of four thousand pounds, and the interest thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, which are or shall be expressed and declared of and concerning the same, by a certain indenture already prepared and engrossed, and bearing or intending to bear even date with these presents, and made or intended to be made between the same persons as are parties to this present indenture (meaning thereby this present indenture;) (*b*) *And* do and shall render and pay all the surplus or residue which shall remain of the monies arising from the said sale or sales, after answering the purposes aforesaid, unto the said [*father of lady*], his executors and assigns, for his and their own absolute use and benefit: PROVIDED ALWAYS, (*c*) and it is hereby agreed and declared between

and pay the surplus to the father of lady.

Proviso that, until premises shall be

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said monies, upon and for such trusts, intents, and purposes, and with, under, and subject," &c. (*as above, omitting the trust of the residue*).

(*b*) See the next precedent.

Other form.

(*c*) Or this clause may be given as follows; and this last seems the neater mode:

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that in the mean time, and until the said manors, messuages or tenements, lands, hereditaments, and premises hereby released or otherwise assured, or intended so to be, shall be sold and disposed of, the same shall be considered as personal estate, and the rents, issues, and profits thereof shall be paid and applied to the person or persons, and in the manner, to whom and in which the interest, dividends, and annual produce of the monies arising from such sale shall be directed to be paid and applied, in and by the indenture hereinbefore referred to, and intended to bear even date with these presents."

CONVEYANCE TO TRUSTEES, UPON TRUST TO SELL.

and by the parties to these presents, that in the mean time, and until the said manors, messuages, lands, tenements, hereditaments, and premises, shall be sold and disposed of under the trusts hereinbefore declared, the said [*trustees*] and the survivor of them, and the heirs and assigns of such survivor, shall apply the rents, issues, and profits thereof, in the first place, in or towards discharging the interest of the said sum of four thousand pounds, so directed to be appropriated and set apart as aforesaid; *And* do and shall render and pay the surplus or residue of the said rents, issues, and profits (if any) which shall remain after answering and paying thereout the interest of the said sum of four thousand pounds as aforesaid, to the said [*father of lady*], his executors, administrators and assigns, for his and their own absolute use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that in the mean time, and until the said manors, messuages, tenements, lands, hereditaments, and premises, shall be sold and disposed of under the trusts hereinafter declared, it shall be lawful for the said [*trustees*] and the survivor of them, and the heirs and assigns of such survivor, with the consent in writing of the said [*father of lady*], and [*gentleman*], or the survivor of them, by any deed or deeds, instrument or instruments in writing, to be by them or him sealed and delivered in the presence of, and attested by two or more credible witnesses, to demise or lease the said manors, messuages or tenements, lands, hereditaments, and premises hereby released, or otherwise assured, or intended so to be, or any of them, or any part thereof, to any person or persons, for any term or terms of years not exceeding fourteen years, to take effect in possession, and not in reversion or by way of future interest, and without taking any fine, premium, or fore-gift for the same, and so that the lessee or lessees do execute a counterpart thereof, and thereby covenant for the payment of the rent. (*Trustee clauses, as ante*, 493, 494; *Covenants for title by father of lady with trustees, as ante*, Vol. VI. p. 257, 262, *except that in the covenant for further assurance, it will be* " at the request of the said trustees, their heirs or assigns, but

all sold, trustees shall apply the rents in the same way as directed by the next precedent.

and the residue to father of lady.

Power, whilst premises remain unsold, to trustees, with the consent of father of lady and gentleman, to lease for fourteen years.

CONVEYANCE TO TRUSTEES, UPON TRUST TO SELL.

at the expense of the said trust premises, or of the purchaser or purchasers thereof under the trusts aforesaid, his, her, or their heirs and assigns," &c.) IN WITNESS, &c.

OF PROCEEDS OF REAL ESTATE.

MARRIAGE SETTLEMENT *of the Sum of Four Thousand Pounds, which is to be set apart from the* PROCEEDS *of Lands, directed to be sold by the Lady's Father by another Indenture; the Gentleman, in consideration thereof, covenanting to charge other Premises with Jointure for the Lady, and with* PORTIONS *for younger Children:—The sum being vested in Trustees, as to Two Thousand Pounds, upon usual Trusts for the Benefit of Gentleman and Children of the Marriage, with all usual Clauses, and if no Children, to Gentleman absolutely; and as to the other Two Thousand Pounds, upon Trusts for the Benefit of the Father and Mother of the Lady, and of the Lady herself, for their respective Lives, and after all their Deaths, as to a Moiety thereof, upon the Trusts declared of the firstly settled Two Thousand Pounds, with certain Qualifications; and if no Children, upon the Trusts declared of the other Moiety; and as to that Moiety, upon such Trusts as Lady shall appoint; and in Default of Appointment, to her absolutely.* COVENANT *by Lady's Father, that if the Produce of the Estate shall not amount to the Sum of Four Thousand Pounds, he will make up the Deficiency.* (See the preceding and next precedents.)

Parties.

THIS INDENTURE, made the day of , BETWEEN [*father of lady*], of, &c. of the first part; [*gentleman*] of, &c. of the second part; [*lady*] of, &c. daughter of the said [*father of lady*] by [M.] his wife, of the third part; and

[*trustees*], of, &c. of the fourth part: WHEREAS the said [*lady*] is entitled to the sum of pounds, and the same is now standing in her name in the books of the governor and company of the bank of England: AND WHEREAS the said [*father of lady*] is seised of or entitled to, in fee simple in possession, the manor of, &c. and divers messuages or tenements, lands, hereditaments and premises, situate in, &c.: AND WHEREAS by the last will and testament of the said [*father of gentleman*], deceased, (the father of the said [*gentleman*]), bearing date, &c. the said [*gentleman*] is entitled, out of the rents and profits of the estates thereby devised, to such an annual sum, not exceeding pounds, as [W. M.], and [S. H.], the two surviving trustees of the said will, or the survivor of them, or the heirs or assigns of such survivor, think proper, and he will, when he shall attain the age of twenty-four years, which will be on the day of , be entitled to the whole of the rents and profits of the said estates, but subject to a proviso for reducing the allowance of the said [*gentleman*] to the annual sum of pounds, during his life, out of the rents and profits of the estates, in case he should, either before or after he should attain the age of thirty-one years, marry without the previous consent of his mother [*mother of gentleman*], since deceased, [G. T.], since deceased, and [W. M.] and [S. H.], or the survivors or survivor of them, or the heirs or assigns of such survivor, in writing under their hands; and for applying, during the life of the said [*gentleman*], such further sums out of the rents and profits, for the benefit of his issue, as the said trustees shall think fit and proper; *And* by the said will the said estates are, after the decease of the said [*gentleman*], limited to the use of his first and every other son successively, according to their respective seniorities, in tail male, with remainder to the uses in the will mentioned, for the benefit of the other sons of the said [*father of gentleman*], and their respective issue male; and by the said will (*power to gentleman to jointure and to portion children, see ante*, p. 392, *and post*); AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said [*gentleman*] and [*lady*]; AND WHEREAS on the treaty for the said intended

OF PROCEEDS OF REAL ESTATE.

That lady is entitled to the sum of —*l.* and that the same is now standing in her name;

and that by the will of gentleman's father, gentleman is entitled to such sum out of the rents as trustees shall think fit, and when he attains 24, to the whole of the rents for life, subject to proviso for retaining the amount if he should marry without consent.

remainder to the use of his first and other sons in tail male, remainders over.

Agreement for marriage,

and that the sum to which

OF PROCEEDS OF REAL ESTATE.

marriage, it was agreed that the sum of pounds, to which the said [*lady*] is so entitled as aforesaid, should, immediately after the solemnization of the said intended marriage, become the absolute property of the said [*gentleman*], and that the said [*father of lady*] should secure the sum of four thousand pounds of lawful money of Great Britain and Ireland, with interest for the same after the rate of five pounds for every one hundred pounds by the year, to be computed from the solemnization of the said intended marriage, to be paid to the [*trustees*], who should stand possessed thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same; *And* upon the treaty for the said intended marriage, it was further agreed, that in consideration of the said [*gentleman*] becoming entitled to the said sum of pounds, and the settlement intended to be made by these presents of the sum of four thousand pounds, and the interest thereof, on the said [*gentleman*] and [*lady*], and their issue, and in exercise of the power of charging with jointures and portions contained in the said will of the said [*father of gentleman*], he the said [*gentleman*] should charge the estates devised by the said will, with the annual sum of pounds, for the jointure of the said [*lady*], in case she should survive him the said [*gentleman*], *And* should covenant with the trustees, that he will, on becoming (*a*), entitled to the receipt of the rents and profits of the estates devised by the said will, charge the same estates with the sum of pounds, for the portions of the children of him the said [*gentleman*], by the said [*lady*], other than and besides the eldest or only son for the time being entitled to the estates in tail male, either in possession, or in reversion immediately expectant on the decease of him the said [*gentleman*]; AND WHEREAS, in pursuance and part performance of the said agreement, by indentures of lease and release (*b*), already prepared and en-

the lady is entitled should become the property of the gentleman;

and that a further sum should be secured to trustees by father of lady, upon the trusts hereinafter mentioned;

and that, in consideration thereof, and of the settlement of the sum of 4000*l.*,

gentleman should charge the estates devised by will of his father with jointure for wife, and covenant to charge the same with portions.

Indentures of lease and release, whereby father of lady

(*a*) The gentleman had no power under the will to charge with portions, until he was in possession.

(*b*) See the last precedent.

OF PROCEEDS OF REAL ESTATE.

grossed, bearing or intended to bear even date with these presents, and made, or expressed to be made, between the said [*father of lady*], of the first part; the said [*gentleman*], of the second part; the said [*lady*], of the third part; and the said [*trustees*], of the fourth part; the said [*father of lady*] hath conveyed, or doth intend to convey, the manor, &c. of or to which the said [*father of lady*] is so seised and entitled, as hereinbefore is mentioned, with their rights, members, and appurtenances, *To the use* of the said [*father of lady*], his heirs and assigns, until the solemnization of the said intended marriage, and after the solemnization thereof, *To the use* of the [*trustees*], their heirs and assigns, *Upon trust*, that the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, should, with the consent in writing of the said [*father of lady*], during his life, and after his decease, at their or his discretion, sell and dispose of the same, and should, out of the monies arising from the sale, appropriate and set apart the sum of four thousand pounds with interest after the rate of five pounds for every one hundred pounds by the year, to be computed from the solemnization of the said intended marriage, and stand possessed of and interested in the said sum of four thousand pounds and the interest thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements and declarations, as are or shall be expressed and declared of and concerning the same, in and by an indenture therein mentioned to be made, prepared, and engrossed, and bearing or intending to bear even date with, and made or intended to be made between the same persons as are parties to these presents, (meaning thereby this present indenture); *And* in and by the said indenture of release, it was declared or intended to be declared, that in the mean time, and until the said manors, messuages, lands, tenements and hereditaments, should be sold and disposed of, the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, should apply the rents and profits thereof, in the first place, in or towards the discharge of the interest of the said sum of four thousand pounds; *And* in the said indenture of release is contained a power to change the trustees of the said indenture, in the usual

hath conveyed premises to trustees upon trust to sell;

and should, out of the proceeds of sale, set apart the sum of 4000*l.* upon the trusts declared by the present indenture.

Declaration that trustees should apply rents as interest of 4000*l.* is directed to be applied.

That agreement as to exercise

OF PROCEEDS OF REAL ESTATE.

manner; AND WHEREAS the said agreement, in regard to the exercise of such power of jointuring and charging with portions as aforesaid, hath been, or is intended to be carried into effect by an indenture already prepared and engrossed, and bearing, or intending to bear, even date with these presents, and made, or intended to be made, between the same persons as were parties to the now recited indenture (*b*).

of powers of jointuring and portioning has been carried into effect by indenture of even date.

NOW THIS INDENTURE (being the indenture referred to in the hereinbefore recited indenture of release of even date) WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, and of the settlement made, or to be made, on the part of the said [*gentleman*], It is hereby agreed and declared between and by the parties to these presents, that the trustees or trustee for the time being, of the hereinbefore recited indenture of release, of even date, shall stand and be possessed of, and interested in the said sum of four thousand pounds, by the same indenture directed to be appropriated and set apart, as hereinbefore is mentioned, and the interest thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and declared of and concerning the same (that is to say); (*Upon trust to invest and vary the securities, and stand possessed thereof upon the trusts hereinafter mentioned, as ante, p.* 506, 507;)

Testatum, whereby it is agreed that trustees shall stand possessed of the sum of 4000*l.* upon the trusts hereinafter mentioned, (that is to say);

as to the sum of 2000*l.*, upon trust to pay dividends to gentleman for his life;

as to the sum of two thousand pounds (one moiety or equal half part of the said sum of four thousand pounds), *Upon trust*, that the said trustees or trustee for the time being, do and shall pay the interest, dividends, and annual produce of the said sum of two thousand pounds, and the stocks, funds, and securities thereof, to, or permit the same to be received by, the said [*gentleman*] and his assigns, during his natural life, and after his decease, to and by the said [*lady*], and her assigns, during her natural life, and after the decease of the survivor of them the said [*gentleman*] and [*lady*], then the said sum of two thousand pounds, and the stocks, funds, and securities in which the same shall be invested, and the interest, dividends and

and after his decease, to lady for her life;

and after the decease of survivor,

(*c*) See the next precedent.

OF PROCEEDS OF REAL ESTATE.

annual produce thereof, shall remain and be, in trust for all and every, or such one or more exclusively of the other or others of the child or children of the said [*gentleman*], by the said [*lady*], other than or besides an eldest or only son, for the time being entitled under the said recited will of the said [*father of gentleman*], to the estates thereby devised for an estate in tail male, either in possession, or in remainder immediately expectant on the decease of the said [*gentleman*]; (*survivorship, maintenance, and advancement clauses, as ante*, p. 503, 508); AND it is hereby agreed and declared between and by the parties to these presents, that if no daughter or younger son or other issue of the said [*gentleman*] by the said [*lady*], shall under and by virtue of the trusts and provisoes hereinbefore declared and contained, become entitled to the said sum of two thousand pounds, and the stocks, funds, and securities thereof, then, after the decease of the said issue, and such failure of issue as aforesaid, the said sum of two thousand pounds, and the stocks, funds, and securities in which the same shall be invested, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have been applied and disposed of under the trusts hereinbefore contained, shall remain and be in trust for the said [*gentleman*], his executors, administrators, and assigns, for his and their own use and benefit; (*accumulation maintenance, and advancement clause, as ante*, 508, 509;) *And* as to the said sum of two thousand pounds (the other moiety or equal half part of the said sum of four thousand pounds), *Upon trust*, that the said trustees or trustee for the time being, do and shall pay the interest, dividends, and annual produce of the said secondly hereby settled sum of two thousand pounds, and the stocks, funds, and securities thereof to, or permit the same to be received by, the said [*father of lady*], and his assigns, during his life, and after his decease to or by [M. J.] the wife of the said [*father of lady*], and her assigns, during her natural life, and after the decease of the survivor of them the said [*father of lady*], and [M.] his wife, to permit the same to be received by the said [*lady*] and her assigns, during her natural life; and after the decease of the said [*father of lady*] and [M.] his wife, and the said [*lady*], upon and

In trust for all the children of the marriage, except an eldest son entitled to real estates;

and if there shall be no children who shall become entitled,

the said sum to be in trust for gentleman absolutely;

and as to the other sum of 2000*l.*, Upon trust to pay the interest to the father of lady for his life,

and after his decease, to mother of lady,

and after the decease of the survivor,

OF PROCEEDS OF REAL ESTATE

for the trusts, intents, and purposes, and with and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same, (that is to say); as to one moiety or equal half part of the said secondly settled sum of two thousand pounds, and the stocks, funds, and securities in which the same shall be invested, and the interest, dividends, and annual produce thereof, upon and for such and so many of the trusts, intents, and purposes, and with, under, and subject to such and so many of the powers, provisoes, agreements, and declarations hereinbefore expressed and declared of and concerning the said firstly settled sum of two thousand pounds, and the stocks, funds, and securities in which the same shall be invested, and the interest, dividends, and annual produce thereof, (except the ultimate trust for the benefit of the said [*gentleman*], his executors, administors, and assigns, after the decease of the said [*lady*], and such failure of issue as hereinbefore is mentioned,) as shall be then subsisting undetermined, and capable of taking effect; but not so as to enable or authorise more than one moiety or equal half part of the said secondly hereby settled sum of two thousand pounds, and the stocks, funds, and securities thereof, to be applied for the advancement or preferment in the world of the child, or all of the children entitled to provisions under these presents, and if no daughter or younger son, or other issue of the said [*gentleman*] by the said [*lady*], shall under or by virtue of the trusts or provisions hereinbefore declared and contained, become entitled to the said moiety or equal half part of the said secondly settled sum of two thousand pounds, and the stocks, funds, and securities in which the same shall be invested, then after the decease of the survivor of them the said [*father of lady*] and [M.] his wife, and [*gentleman*] and [*lady*], and such failure of issue as aforesaid, the said moiety or equal half part of the said secondly settled sum of two thousand pounds, and the stocks, funds, and securities in which the same shall be invested, and the interest, dividends, and annual produce thereof, or so much thereof as shall not have been applied and disposed of under the powers and authorities hereinbefore contained, shall remain and be upon and for

to lady for her life; and after her decease upon the trusts hereinafter mentioned: as to one moiety thereof, Upon the trusts declared of the firstly settled sum of 2000*l.*, except the ultimate trust in favour of gentleman;

but not so as to authorize a double advancement.

and if no child shall become entitled thereto,

upon the trusts declared of

such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations as are hereinbefore expressed and declared of and concerning the other moiety, or equal half part of the said secondly hereby settled sum of two thousand pounds, and the stocks, funds, and securities in which the same shall be invested, and the interest, dividends, and annual produce thereof, or as near thereto as circumstances will permit: *And* as to the other moiety or equal half part of the said secondly hereby settled sum of two thousand pounds, and the stocks, funds, and securities in or upon which the same shall be invested, and the interest, dividends, and annual produce thereof, the same shall, after the decease of the survivor of them the said [*father of lady*] and [M.] his wife, and [*gentleman*] and [*lady*], remain and be, upon and for such trusts, intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*lady*], by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of a will, or any codicil thereto in writing, to be by her signed and published in the presence of and attested by three or more credible witnesses, shall from time to time, during her said intended coverture, and notwithstanding the same, direct or appoint; and so far as any such (if incomplete) shall not extend, *In trust* for the said [*lady*], her executors, administrators, and assigns, for her and their own absolute use and benefit. (*Power to convert and re-convert the personal estates, as ante*, p. 510); AND in pursuance and further performance of the said agreement, and for the considerations hereinbefore mentioned, the said [*father of lady*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors and administrators, in manner following, (that is to say); that if the rents of the said manor, messuages, or tenements, lands, and hereditaments, comprised in the hereinbefore recited indentures of lease and release, shall, before the sale thereof,

OF PROCEEDS OF REAL ESTATE.

the other moiety of the secondly settled sum of 2000*l.*,

and as to the other moiety of the secondly settled sum of 2000*l.*, the same shall, after the death of lady's father and mother, gentleman, and lady, be upon such trusts as lady shall by deed or will appoint;

and in default of appointment, in trust for lady absolutely.

Covenant by lady's father with trustees, that if the rents of the premises directed to be sold, shall be insufficient to discharge the interest of the sum of 4000*l.*, that he will make good the deficiency, and that the rent

Of proceeds of real estate.

If be applied the first place in discharging interest;

that if the produce of the sale of the premises shall not amount to 4000*l.*, he will pay such a sum the trustees shall supply the deficiency, be held upon trusts hereinbefore declared.

be insufficient to discharge the interest of the said sum of four thousand pounds hereby settled as aforesaid, then and in such case, he the said [*father of lady*], his heirs, executors, or administrators, shall and will at all times make good the deficiency, and that the rents, issues, and profits of the said manor, messuages or tenements, lands, and hereditaments, shall at all times hereafter before the sale thereof, be in the first place applied in or towards discharging the interest of the said sum of pounds, first hereby settled as aforesaid, and that if the monies arising from the sale of the said manor, messuages or tenements, lands, and hereditaments, shall not, after payment of the expenses of the trustees for performing the trusts, amount to the sum of four thousand pounds of lawful money of Great Britain and Ireland, then and in such case, he the said [*father of lady*], his heirs, executors, and administrators, shall and will well and truly pay, or cause to be paid, to the trustees or trustee for the time being of the said recited indenture of release, such a sum of money as, together with the monies to arise by such sale, and which remain after payment of such expenses as aforesaid, will make up the said sum of four thousand pounds; and the said sum or sums of money, which shall be so paid to make up the sum of four thousand pounds, and the interest thereof, shall be held upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, as are hereinbefore expressed and declared of and concerning the said sum of four thousand pounds, by the said recited indenture of release directed to be appropriated and set apart as hereinbefore is mentioned, and the interest thereof. (*Power to change trustees, and clause for their indemnity and reimbursement, as ante*, p. 511, 512.) In witness, &c.

MARRIAGE SETTLEMENT, *whereby in Consideration of the Settlement of Lady's Fortune, Gentleman, in exercise of a Power given to him for that purpose, charges certain Premises with the Payment of a yearly Rent for the Lady's* JOINTURE, *with usual Powers for securing the same, and appoints the Premises to Trustees for a* TERM *of Years, for further securing the said Jointure Rent-charge, with Proviso for Cesser of the Term; and whereby Gentleman Covenants on his Accession to an Estate, to charge it with* PORTIONS *for the younger Children of the Marriage, to vest and be paid in such manner as he should appoint.* (See the two last Precedents.)

EXERCISE OF POWER OF JOINTURING, AND COVENANT TO CHARGE WITH PORTIONS.

THIS INDENTURE, made the day of , BETWEEN [*father of lady*] of, &c. of the first part; [*gentleman*] of, &c. of the second part; [*lady*] of, &c. spinster, daughter of the said [*father of lady*], by [M.] his wife, of the third part; and [*trustees*], of the fourth part: (*Recite the will of gentleman's father, as ante*, p. 523, *with the power of jointuring and portioning fully, see ante*, p. 392, *and* 2 *Byth.* 492, 493, *and post.*) AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said [*gentleman*] and [*lady*], with the consent of the said [W.M.] and [S. H.], given by the writing under their hands annexed to these presents; *And* upon the treaty for the said intended marriage, it was agreed, (*here recite the agreements as to the one thousand pounds, and four thousand pounds, as ante* p. 523, 524); *And* upon the treaty for the said intended marriage, it was further agreed, that the said [*gentleman*] should in the manner hereinafter mentioned, exercise the power of jointuring, contained in the said recited will of the said [*father of gentleman*], and should also covenant, in the manner hereinafter mentioned, to exercise the power of charging with portions, contained

Partie

Agreement for marriage with consent of gentleman's guardian's;

and that gentleman should execute power of jointuring, and should covenant to execute power of portioning;

EXERCISE OF POWER OF JOINTURING, AND COVENANT TO CHARGE WITH PORTIONS.

in the said recited will; AND WHEREAS the agreement, on the part of the said [*father of lady*], so far as relates to the vesting the estates of the said [*father of lady*], in the county of , in trustees, in trust to sell, hath been, or is intended to be carried into effect, by an indenture (*a*) already prepared and engrossed, and bearing, or intending to bear, even date with these presents, and made or intended to be made, between the said [*father of lady*], of the first part, [*gentleman*], of the second part, the said [*lady*], of the third part, and the said [*trustees*], of the fourth part; *And* the said agreement, so far as relates to the settlement of the said sum of four thousand pounds, and the interest thereof, and the securing the same by the covenant of the said [*father of lady*], hath been, or is intended to be carried into effect, by an indenture (*b*), already prepared and engrossed, bearing, or intended to bear, even date with these presents, and made, or intended to be made, between the same persons as are parties to the last mentioned indenture. NOW THIS INDENTURE WITNESSETH (*c*), that in

that the agreement as to conveying estates to trustees to sell, has been carried into effect by indentures of even date;

that the agreement as to securing the sum of 4000*l.* by covenant of lady's father, has been carried into effect by another indenture of even date.

First witness-

(*a*) See the last precedent but one, p. 517.

(*b*) See the last precedent.

What will be a valid jointure.

(*c*) The origin, and some other particulars concerning jointures, having been considered in 2 Byth. by Stewart, 488 *et seq.*, it will only be necessary in this place to consider shortly what will constitute a valid jointure at law and in equity.

At law.

And first, at common law, the jointure must be so limited as to take immediate effect on the death of the husband; and the mere possibility of its becoming good at that time is insufficient. As if an estate were limited to A. for life, remainder to B. for life, remainder to such woman as B. might marry, this would not be a good jointure upon B.'s wife, because B. might die before A., and she would then be unprovided for until the death of A. Co. Litt. 36, b. 4 Co. 2, b. 1 Sid. 3. Winch. 33. *Caruthers* v. *Caruthers*, 4 B. C. C. 500. But it seems, a defect in the *title* of the property upon which the jointure is charged, will not render the jointure *ab initio* void. *Corbet* v. *Corbet*, 1 Sim. & Stu. 612.

The limitation of an estate to the husband and wife jointly, will be a good jointure upon the wife. *Dennis's case*, Dy. 248, a. 4 Rep. 3, b. But whether the jointure would be good, if the estate were limited to the wife and a stranger, is open to doubt, Winch. 33, the settlement not being to the wife alone.

pursuance and part performance of the said agreement, on the part of the said [*gentleman*], and in consideration of the said intended marriage, and of the said [*gentleman*] becoming entitled, on the said marriage, to the sum of one thousand pounds, to which the said [*lady*] is so entitled as aforesaid, and the settlement of the said sum of four thousand pounds, and the interest thereof, made, or intended to be made, as hereinbefore is mentioned, and by force and virtue, and in exercise or execution of the power or authority to him for this purpose given by the said

EXERCISE OF POWER OF JOINTURING, AND COVENANT TO CHARGE WITH PORTIONS.

ing part, whereby, in consideration of marriage, and of lady's settlements, gentleman, by virtue of his power of jointuring,

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It is also necessary that the estate in jointure should continue for the life of the widow. Therefore an estate given to the wife during the life of another or others, will not be a good jointure. 4 Rep. 2, b. Co. Litt. 36, b. Hob. 40. 153. But if the destruction of the estate be dependent on the act of the widow, the jointure will be good. Thus the limitation of an estate *durante viduitate* will be a good jointure. *Vernon's case*, 4 Co. 3, a. Dy. 317, a. But no term of years in an estate, however long the term may be, will be a valid jointure within the act (27 Hen. VIII. c. 10). Co. Litt. 36, b.

The jointure, to be a complete bar to the wife's right to dower, must be made before marriage; Co. Litt. 36, b.; but if it is made after marriage, and the wife accept it after the husband's death, it will then be a valid jointure. Co. Litt. 36, b. 2 Byth. 495. 3 Rep. 26, a. 3 Leon. 271. Dy. 220. *Vernon's case*, 4 Rep. 3, a. *Leicester* v. *Haydon*, Plow. 396, b. *Tracey* v. *Ives*, 1 Leon. 311. And if the jointure is made after marriage, she will be put to her election by the courts of common law, whether she will have the jointure or her dower. 4 Rep. 2, b. A devise by will was no bar to dower, unless it was expressly stated to be in satisfaction of dower. Co. Litt. 36, b. 4 Rep. 1.

Another requisite of a valid jointure is, that it must be expressed to be in satisfaction of the *whole*, and not of *part* of the wife's dower. 4 Rep. 3, a. According to several cases decided before the statute of frauds (29 Car. II. c. 3.), this need not have been *expressed* in the instrument limiting the jointure, but might have been averred, and proved, and supported by parol evidence. *Vernon's case, ubi supra. Tracey* v. *Ives, ubi supra. Villers* v. *Beaumont*, Dy. 146, pl. 68. But since this statute, it must be actually expressed in the deed, and cannot be averred, either at law or in equity. *Tinney* v. *Tinney*, 3 Atk. 8. *Charles* v. *Andrews*, 9 Mod. 152.

A trust estate, as has been shewn before, although not a good legal jointure, will be good in equity. 2 Byth. 491. So, also, although ac-

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will of the said [*father of gentleman*], as hereinbefore is mentioned, and of all other powers and authorities in anywise enabling him in this behalf, He the said [*gentleman*], *Doth* by this present deed or instrument in writing, sealed and delivered by him in the presence of the two persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by him the said [*gentleman*], grant, limit, and appoint, *To the use* of the said [*lady*] and her assigns, in case the said intended marriage shall take effect, and she shall survive the said

appoints an annual sum of —*l.*, to be issuing out of certain hereditaments.

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cording to the strict words of the statute, the jointure could only come from the husband, yet it has been repeatedly held, that the provision may come from the ancestors of the husband, or from trustees for the husband. Moor, 28, pl. 91. *Ashton's case*, Dy. 228, a. pl. 46. *Melles's case*, cit. 4 Co. 4.

A jointure out of a copyhold estate will not be a bar to dower, Gilb. Ten. 182; *Gladstone* v. *Ripley*, cit. 2 Eden, 59; *Walker* v. *Walker*, 1 Ves. sen. 54; and a valid jointure will not bar the widow's right to freebench, copyholds not being within the statute. *Walker* v. *Walker*, *ubi supra*.

Jointure on infants.

It now seems to be clear, that a jointure on an infant will be valid, on whatever property it is secured, whether freehold, copyhold, leasehold, or personalty, if it is a sufficient and certain provision, and the infant's father or guardian assent to it. *Jordan* v. *Savage*, 3 Bac. Abr. 717. 2 Eq. Ca. Ab. S. C. *Williams* v. *Chitty*, 3 Ves. 545. *Holt* v. *Clarencieux*, 2 Stra. 937. *Zouch* v. *Parsons*, 3 Burr. 1794. *Drury* v. *Drury*, 3 B. P. C. 492. 4 B. C. C. 513. And see 2 Byth. by Stewart, 492.

What requisite in equity to render jointure valid.

The principal rules as to the validity of jointures at law, have now been mentioned. These rules, however, have been considerably varied in courts of equity. Thus, if the intended wife be an adult, and is a party to the deed limiting the jointure, and thereby consents to accept an uncertain and precarious provision in lieu of her dower, she will be barred of her dower. *Caruthers* v. *Caruthers*, 4 B. C. C. 513, and 2 Byth. 492. Therefore, if the wife assent, it is not necessary in equity that the jointure estate should commence from the husband's death, or should continue during her life, or should consist of freehold property, for she is capable of dealing with her own rights, and she will therefore be completely barred by any provision which she chooses to accept. *Caruthers* v. *Caruthers*, *ubi supra*. *Rose* v. *Reynolds*, 1 Swanst. 446. *Charles* v. *Andrews*, 9 Mod. 152. *Vizard* v. *Longden*, cit. 2 Eden, 66.

[*gentleman*], one annual sum, or yearly rent-charge of pounds, of lawful money of Great Britain and Ireland, to be yearly issuing out of, and charged upon all that the manor or lordship, or reputed manor or lordship of , in the county of , and divers messuages or tenements, lands, farms, and hereditaments, situate, lying, and being in the county of , a particular of which messuages, lands, tenements, farms, and hereditaments is annexed, by way of schedule to these presents, (which said manors, messuages, tenements, lands,

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Lacy v. *Anderson*, 1 Swanst. 445. *Gladstone* v. *Ripley*, cit. 2 Eden, 59. *Creswell* v. *Byron*, 3 B. C. C. 362. And a jointure will in equity bar the right to freebench. *Jordan* v. *Savage*, *ubi supra*. *Walker* v. *Walker*, *ubi supra*. So, if a jointure rest only on the covenant or articles before marriage of the husband, it will be a good bar in equity. 3 P. Wms. 269.

Although the jointure limited to the wife be not a good legal jointure, yet a court of equity will put the wife to her election; as it deems it to be unjust that she should enjoy both her dower and her jointure. See 2 Scho. & Lef. 449.

If an instrument intend to secure a jointure, the form of it is immaterial. Thus a *covenant* or bond to pay a sum of money in bar of dower, will be held to be a good jointure. *Davila* v. *Davila*, 2 Vern. 724; 2 Eden, 39. *Buckinghamshire* v. *Drury*, 2 Eden, 60. *Estcourt* v. *Estcourt*, 1 Cox, 20. So also the rule that the instrument limiting the jointure must express that it is in lieu of the whole of the wife's dower, has received some modification in courts of equity. Thus, although parol evidence is equally inadmissible in both courts, 3 Atk. 471, yet a court of equity will take the whole instrument into consideration, and will seize upon any expression in the instrument in order to make the provision a good equitable jointure. See *Gartshore* v. *Chalie*, 10 Ves. 20. Thus where the provision was expressed to be for the wife's livelihood and maintenance, or for her provision, it was held to be a valid jointure. *Vizard* v. *Longdale*, 3 Atk. 8; 1 Ves. sen. 55; cit. 2 Eden, 68. *Walker* v. *Walker*, 1 Ves. sen. 55. But see *Crouch* v. *Stratton*, 4 Ves. 394. *Charles* v. *Andrews*, 9 Mod. 151.

If a widow having a legal jointure is evicted of the whole or a part of it, *Gervoyes' case*, Moore, 717, by superior title, she is, under the stat. 27 Hen. VIII. c. 10, s. 7, intitled to be endowed of so much of the residue of her husband's real estates as the lands of which she is evicted amount to. This right is the same, whether the jointure was

Where a widow is evicted of jointure.

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and hereditaments, comprised the lands devised by the said recited will of the said [*father of gentleman*]), and to be issuing out of, and charged upon all other the hereditaments in the said county of , devised by the said will of the said [*father of gentleman*], *And* to be yearly issuing out of and charged upon the rights, members, and appurtenances to the said manors, messuages or tenements, lands, and hereditaments, belonging or in anywise appertaining; To HAVE, HOLD, RECEIVE, AND TAKE the said annual sum, or yearly rent-charge of

Habendum, if marriage shall take effect, from the time of the decease of gentleman, for the life of lady, in bar of dower.

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made before or after the marriage; *Gervoyes' case,* and *Beard* v. *Nuthall,* 1 Vern. 427; and if the eviction takes place during the coverture, the widow has the same right to compensation, by endowment out of the other estates; *Gervoyes' case.* If the husband has aliened the other estates, the widow's right of dower being revived on the eviction, she may enforce it at law against the purchaser. *Mannsfield's case,* Co. Litt. 33, a. note 8. The effect of the eviction is to remit her to her dower, *pro tanto.* But if the value of the dower be greater than that of the jointure, she recovers the amount of the latter only. *Corbet* v. *Corbet,* 1 Sim. & Stu. 620. If the value of the jointure be greater than that of the dower, she is not entitled under the statute to recover any thing beyond her dower, *Beard* v. *Nuthall, Tew* v. *Winterton,* 3 Bro. C. C. 489; 1 Ves. jun. 451; and she will only be able to hold the lands recovered during her life, though her jointure may have been settled on her in tail, or in fee simple. 4 Co. 3, b.

But if the jointure be made by an *antenuptial* settlement, in consideration of which, the wife, being adult, agrees to relinquish her right of dower, and she be afterwards evicted, it seems, that although her right to dower is revived at law, she will in equity be precluded from claiming it. Thus in *Simpson* v. *Gutteridge,* 1 Mad. 609, where a jointure rent-charge had been settled in pursuance of articles made before marriage, the wife being of age at the time, it was held, that she was barred from all claims of dower, and, therefore, that a purchaser of other lands of the husband, was not entitled to call for the production of the title to the rent-charge.

When the jointure is equitable, the consequences, it is presumed, will be the same as if it were legal. In *Drury* v. *Drury,* Lord Hardwicke observed, that if the husband, who, on marrying an infant had covenanted to pay an annuity by way of jointure, had dissipated his property, that would have been an eviction in equity, and, consequently, would have given the wife a right to dower, like the case of an evic-

pounds, in case the said intended marriage shall take effect, from the time of the decease of the said [*gentleman*], unto the said [*lady*], her heirs and assigns, for and during the term of her natural life, for her jointure, and in full recompense, satisfaction, and bar, of the dower, thirds, or free-bench, which by common law or by custom, or otherwise, the said [*lady*] may, or otherwise might have or claim in, to, or out of any lands or other hereditaments, of which the said [*gentleman*] shall, during the said intended coverture, be seised for any estate of inheritance, and to be

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tion at law; 2 Eden, 68. So it has been suggested, that if on the marriage of an infant, an annuity charged on money in the funds, in the names of trustees, were settled by way of jointure, and the funds were wasted by the trustees, it would amount to an eviction, and the widow would not be restrained from proceeding for her dower; see Sugden on Vend. 306, 5th ed. In *Tew* v. *Winterton*, 1 Ves. jun. 451, the husband gave a bond to secure an annuity to the wife in case of her surviving, and by a memorandum subscribed to the bond, she declared that she accepted the said jointure in bar and satisfaction of all dower and thirds. On the husband's death, the court decreed the payment of the annuity out of the assets, and in case they should not be sufficient, then out of certain estates of which he was tenant in tail, provided the deficiency did not exceed the amount of the dower to which the wife would have been entitled, if she had not, by the memorandum, accepted the annuity. This was said by Lord Thurlow to be very subtle equity; 1 Ves. jun. 452; and the case appears to be at variance with *Simpson* v. *Gutteridge*, unless the memorandum signed by the wife, was looked upon only as a conditional relinquishment of her right to dower.

Independently of the wife's right to recover dower on eviction of her jointure, she may also, in that case, resort to any remedies which she may have against her husband's assets, by covenant or otherwise. Thus in *Beard* v. *Mitchell*, 3 Bro. C. C. 489, the husband, after marriage, gave a bond to settle a jointure of a certain amount on his wife; he accordingly settled on her lands, of which she was afterwards evicted; and it was held, that she might proceed at law for the recovery of her dower, and if that fell short of the jointure in value, she was to receive the difference out of her husband's assets, as a bond creditor. 2 Rop. Husb. & Wife, by Jacob, 495.

A covenant or agreement to jointure will be enforced in equity, and Where a cove-

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paid to her the said [*lady*] or her assigns, in Lincoln's Inn Hall, in the county of Middlesex, by equal quarterly payments, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year, the first quarterly payment of the said sum of pounds, to be made on such of the said days as shall first happen after the decease of the said [*gentleman*]: (*powers of entry and distress, and detention of possession, as ante, p.* 406, 407). AND THIS INDENTURE FURTHER WITNESSETH,

Second witnessing part,

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nant to jointure will be decreed to be performed.

be decreed to be specifically performed; and a wife is looked upon as a purchaser of her jointure, and will avoid any prior voluntary settlement, *pro tanto*, 1 Chan. Ca. 100. And equity will supply any deficiency in the amount of the jointure which the husband has covenanted to make; *Probert* v. *Morgan*, 1 Atk. 440; *Speake* v. *Speake*, 1 Vern. 217; *Prime* v. *Stabbing*, 2 Ves. sen. 409. And equity will remove an outstanding satisfied term, even against a purchaser, with notice of her jointure, for her benefit; Prec. Cha. 65. But equity will not decree performance of an agreement to jointure, against a purchaser for valuable consideration without notice; 2 Vern. 271, 599; 2 P. Wms. 681.

Although the power is to be exercised when the tenant is in possession, it is not necessary that the husband should be in the actual possession of the property at the time he covenants to make the jointure; *Alford* v. *Alford*, 1 Stra. 604; *Jackson* v. *Jackson*, 4 B. C. C. 462; *Lowson* v. *Lowson*, 3 B. C. C. 272. But the covenant should clearly express on what lands it is intended to be a charge; as if the settlor has two different properties, the one subject to this power, and the other not, and does not express on which he intends to charge the jointure, equity cannot enforce the covenant. *Elliott* v. *Hele*, 1 Vern. 406. *Holme* v. *Coghill*, 7 Ves. 499. *Brown* v. *Higgs*, 8 Ves. 570. *Lowson* v. *Lowson*, 3 B. C. C. 272. *Dillon* v. *Dillon*, 1 Ba. & B. 77.

If it is intended that the jointure should be free of all taxes, impositions, and outgoings whatsoever, it must be so expressed; see *Marchioness of Blandford* v. *Duchess of Marlborough*, 2 Atk. 542; for although a power is given to charge a jointure of the clear yearly value of one hundred pounds, it will still be liable to the land tax and all other outgoings which, according to the custom of the country, are borne by the landlord. *Earl of Tyrconnel* v. *Duke of Ancaster*, 2 Ves. sen. 504. And see *Pinnell* v. *Hallett*, Ambl. 106; and *Speake* v. *Speake*, 1 Vern. 217.

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that in pursuance, and further performance of the said agreement, on the part of the said [*gentleman*], and for the considerations aforesaid, and for better securing the due payment of the said annual rent-charge of pounds, hereby appointed to the use of the said [*lady*] and her assigns for her life, as aforesaid, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] paid to the said [*gentleman*], at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged); and

whereby for better securing the payment of the rent, gentleman appoints

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When a husband has covenanted or agreed to settle a jointure in lands on his wife, and has none, and afterwards purchases lands, and takes a conveyance of them to himself in fee, and dies without making a settlement, this will be considered in equity as a performance of his engagement. *Tooke* v. *Hastings*, 2 Vern. 97; *Wilcocks* v. *Wilcocks*, 2 Vern. 558. Therefore, unless this presumption can be repelled by evidence of an opposite intention, the heir of the settlor will be a trustee for the widow, 10 Ves. 10. But if the husband had other lands at the time of his purchase, then the presumption will not arise, unless the covenant was to *purchase*, and settle lands in jointure, 3 P. Wms. 212; 3 Atk. 327. And although the covenant is to purchase lands with the consent of others, yet they will be bound, although purchased without such consent. *Lechmere* v. *Lechmere*, 3 P. Wms. 212. Cas. temp. Talb. 80. and the result will be the same, although the lands purchased are of smaller or greater value than those covenanted to be settled, 3 P. Wms. 212; *Deacon* v. *Smith*, 3 Atk. 323; *Attorney General* v. *Whorwood*, 1 Ves. sen. 540. 10 Ves. 9. But where the lands purchased, will not answer the purposes of the settlement, as where the covenant is to purchase lands of inheritance, and leaseholds for lives or years, 3 P. Wms. 225, lands in borough English, *Pinnell* v. *Hallott*, Ambl. 106, copyholds, *ibid*; *Attorney General* v. *Whorwood*, *ubi supra*, are purchased, they will not be bound.

What will be held to be a satisfaction of a covenant to jointure.

A covenant or agreement to jointure, may also be satisfied in equity, by some provision by the will of the settlor, of the same nature, and equally beneficial as the proposed jointure. But it must be *ejusdem generis*, as if the covenant be to settle an annuity of one thousand pounds, to be issuing out of part of the settlor's real estates; a bequest to her of a leasehold house, money in the funds, plate, linen, and furniture, will not satisfy the covenant. *Broughton* v. *Errington*, 7 B. P. C. 461; *Eastwood* v. *Vinke*, 2 P. Wms. 614. So, if the lands devised are not equally beneficial, as if they are covenanted to be settled

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by force and virtue, and in exercise and execution of the power and authority to him the said [*gentleman*] for this purpose given, as hereinbefore is mentioned, and of all other powers and authorities enabling him in this behalf; HE the said [*gentleman*], *Doth* by this present deed or instrument in writing, so sealed and delivered by him, and intended to be attested as aforesaid, limit and appoint the manors, messuages or tenements, lands and hereditaments, hereby charged as aforesaid with the payment of the said annual sum or yearly rent-charge of pounds, and the rights, members, and appurte-

the hereditaments, charged with the rent-charge, to trustees for 100 years, to commence from the decease of gentleman,

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without impeachment of waste, and are devised without this privilege, they will not be a satisfaction, *Alleyn* v. *Alleyn*, 2 Ves. sen. 38. And where there is an intention that the widow should enjoy both the jointure and the lands devised to her, there the doctrine of satisfaction will not apply. *Prince* v. *Stebbing*, 2 Ves. sen. 409.

The difference between the performance and the satisfaction of such a covenant is, that the former arises upon the act of the party in his lifetime, to take effect after his death; and requiring no particular expression of the intention of the settlor, the presumption arising on the *act itself*; whereas the latter arises from a bequest or direction to the widow by the settlor, and is complete in his lifetime; the presumption arising from an inference drawn from the relative situation of the parties, and the nature of the benefit devised or bequeathed.

Defects in the execution of power to jointure will be supplied in equity.

The formalities required by power of jointuring should be observed; but if the donee of the power omit any of the circumstances required by them in their execution, they will be supplied by equity in behalf of the jointress, if there is a clear intention to exercise the power. Thus if a power is required to be executed by indenture, and it is executed by deed poll, or will, *Tollet* v. *Tollet*, 2 P. Wms. 490, or it is executed in the presence of less than the prescribed number of witnesses; *Cotter* v. *Layer*, 2 P. Wms. 623; *Sergeson* v. *Sealey*, 2 Atk. 415; *Wade* v. *Paget*, 1 B. C. C. 363; or, in short, wherever there is an intent to execute it, and that intent appears in writing, 2 B. &. Beat. 44; *Coventry* v. *Coventry*, 2 P. Wms. 222; 10 Mod. 469; *Vernon* v. *Vernon*, Ambl. 1; the execution of the power will be supported in equity. So also, if a person, as has before been shewn, agrees to execute such a power, and dies before the execution of it, a performance of the agreement will be enforced in equity. *Alford* v. *Alford*, 1 Stra. 604; *Clifford* v. *Burlington*, 2 Vern. 379; *Jackson* v. *Jackson*, 4 B. C. C. 462.

And equity will enforce the defective execution of such a power,

nances, *To the use* of the said [*trustees*], their executors, administrators, and assigns, for and during, and unto the full end and term of one hundred years, to commence and be computed, if the said intended marriage shall take effect, from the decease of the said [*gentleman*], and thenceforth next ensuing, and fully to be complete and ended, without impeachment of waste, upon the trusts, and under and subject to the provisions hereinafter contained concerning the same, (that is to say); *In trust* to permit the person or persons entitled for the time being to the said manors, messuages or tenements, lands, and hereditaments, in remainder or reversion immediately expectant upon the determination of the said term of one hundred years, to receive and take the rents, issues, and profits of the same manors, messuages or tenements, lands, and hereditaments, until the said annual sum or yearly rent-charge of pounds, or any part thereof, shall be in arrear and unpaid for the space of sixty days after the same ought to be paid as aforesaid; and that in case, and so often as the said annual sum or yearly rent-charge of pounds, or any part thereof, shall be in arrear and unpaid for the space of sixty days, then and so often (although no formal demand shall be made of the said annual sum or yearly rent-charge, or the arrears thereof), *Upon trust* that the said [*trustees*], and the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, out of the rents, issues, and profits of the said manors, messuages or tenements,

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upon trust,

to permit the persons in reversion to receive the rents, until the jointure rent-charge shall be in arrear for 60 days;

and then, by sale or mortgage, or otherwise, to raise the same,

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although the wife is otherwise provided for. *Juder* v. *Anson*, 2 Ves. sen. 502; *Smith* v. *Baker*, 1 Atk. 386. If the parties wish the jointure to be clear, the power should authorise the husband to charge the hereditaments with any rent or sum, by way of jointure, not exceeding the sum of pounds, without any deduction for taxes, rates, or other charges then, or at any time thereafter affecting either the said hereditaments, or the said rent-charge. Where power was given to charge a jointure not exceeding the *clear* yearly value of one hundred pounds, it was held to mean clear of all charges, which, according to the custom of the country, were to be borne by the *tenant*, but to be subject to the land tax, and all other outgoings, which were borne by the landlord. *Earl of Tyrconnel* v. *Duke of Ancaster*, 2 Ves. sen. 504, and *ante*, 538.

As to a fraudulent execution of such a power, see 2 Byth. 496.

How the power should be worded.

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lands and hereditaments, or by demising, leasing, mortgaging, or selling the same manors, messuages or tenements, lands, and hereditaments, or any part thereof, for all or any part of the same term, or by bringing actions against the tenants or occupiers of the said manors, messuages or tenements, lands and hereditaments, for the recovery of the rents and profits thereof, raise and pay to the said [*lady*], her executors, administrators, and assigns, all such arrears of the said annual sum or yearly rent-charge of pounds as shall be so unpaid, and all costs, charges, damages, and expenses which the said [*lady*], her executors, administrators, and assigns, or the said [*trustees*], or the survivor of them, his executors and administrators, shall expend, sustain, incur, or be put unto, by reason of the nonpayment thereof; *And* do and shall pay the surplus of the money (if any) received by the ways and means aforesaid, to the person or persons who for the time being shall be entitled to the remainder or reversion of the said manors, messuages or tenements, lands, and hereditaments, immediately expectant on the determination of the said term of one hundred years, to and for his and their own absolute use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared, that after the decease of the said [*lady*], and full payment to her the said [*lady*], her executors, administrators, and assigns, of the said annual sum or yearly rent-charge of pounds, and of all arrears thereof, and all costs, charges, and expenses relating thereto, the said term of one hundred years shall (subject and without prejudice to any disposition which shall have been made of the premises comprised therein, or any of them, for the purposes aforesaid,) absolutely cease and determine; *And* the said [*gentleman*] doth hereby for himself, his executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, by these presents, in manner following, (that is to say); That he the said [*gentleman*] hath in himself, at the time of the sealing and delivery of these presents, good right, full power, and absolute authority, to limit and appoint the said manors, messuages or tenements, lands, hereditaments, and premises, *To the use* of the said [*trustees*], their exe-

and pay the surplus to the reversioner.

Proviso for cesser of term.

Covenant by gentleman with trustees that he hath good right to appoint the term,

cutors, administrators, and assigns, for the said term of one hundred years, upon the trusts, and for the intents and purposes hereinbefore declared and mentioned of and concerning the same; *And* to limit and appoint the said annual sum or yearly rent-charge of pounds, *To the use* of the said [*lady*] and her assigns, for her life, to take effect, and be paid and payable in such manner, and with such powers and remedies for recovering and compelling payment thereof, when in arrear, as hereinbefore is mentioned and contained; *And further*, that the said hereinbefore recited power of limiting a jointure, is a valid and subsisting power, and not exercised, released, revoked, or suspended in any manner whatsoever; *And* that the said manors, messuages or tenements, lands, and hereditaments, are well and effectually charged with the said annual sum or yearly rent-charge of pounds; *And* that it shall be lawful for the said [*lady*], at all times after the decease of the said [*gentleman*], to receive and take the said annual sum or yearly rent-charge, when and as the same shall from time to time become due and payable, without any interruption, claim, or demand whatsoever, of, from, or by any person or persons having or claiming, or who shall or may have or claim any estate, right, title, or interest, in, to, or out of the said manors, messuages or tenements, lands, and hereditaments; *And further*, that he the said [*gentleman*] shall and will, at all times after the said intended marriage, upon the request of the said [*trustees*], their executors, administrators, and assigns, or of the said [*lady*], but at the proper costs and charges of the said [*gentleman*], his executors or administrators, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, and things, for the better and more effectually limiting and appointing of the said manors, messuages or tenements, lands, and hereditaments, to the use of the said trustees, their heirs, executors, administrators and assigns, for the residue then to come and unexpired of the said term of one hundred years, upon the trusts and for the intents and purposes hereinbefore declared of and concerning the said term, and for the further

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and the jointure,

and that the power is good;

and that the premises are well charged;

and that the lady shall receive her jointure;

and for further assurance.

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and more effectually limiting, assuring, and confirming the said annual sum or yearly rent-charge of pounds, to the use of the said [*lady*] and her assigns for her life, as hereinbefore is mentioned, and for the better and more effectually charging the said manors, messuages or tenements, lands, and hereditaments, with the payment of the same, as by the said [*trustees*], their executors, administrators, or assigns, or the said [*lady*], or their or any of their counsel in the law, shall be reasonably devised, advised, and required (*d*). AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, on the part of the said [*gentleman*], and for the considerations aforesaid, HE the said [*gentleman*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, and administrators, that in case the said intended marriage shall take effect, and the said [*gentleman*] shall, by virtue of the limitations hereinbefore contained in the said recited will, become entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said manors, messuages, or tenements, lands and hereditaments thereby devised, he the said [*gentleman*] shall and will, in exercise of the power of charging with portions given to him by the said will as hereinbefore is mentioned, well and effectually, and to the satisfaction of the said [*trustees*], or the survivor, his executors and administrators, and at the expense of the said [*gentleman*], his executors and administrators, subject and charge the said manors, messuages or tenements, lands, and hereditaments, devised by the said will, to and with the payment of the sum of pounds of lawful money of Great Britain and Ireland, for the portion or portions of the child or children of the said [*gentleman*] by the said [*lady*], (other than or besides an eldest or only son for the time being entitled under the limitations contained in the said recited will, to the said manors, messuages or tenements, lands, and hereditaments, for an estate in tail male, in posses-

Third witnessing part, whereby gentleman covenants with trustees,

that if marriage shall take effect, and gentleman shall become entitled to hereditaments, he will, by virtue of his power of charging with portions, charge the hereditaments with the sum of —*l.* for portions for younger children,

(*d*) See another precedent of an appointment of a jointure, 2 Byth. 488, 501, and *post*.

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sion or remainder, immediately expectant on the decease of the said [*gentleman*], (and limit or appoint the said manors, messuages or tenements, and hereditaments, with their rights, members, and appurtenances, to two trustees, (who shall be approved of by the said [*trustees*] and the survivor of them, his executors and administrators), their executors, administrators, and assigns, for a term of one thousand years, to commence from the decease of the said [*gentleman*], without impeachment of waste, *Upon trust* to raise the sum of pounds by way of mortgage; *And* in the deed by which the said sum of pounds shall be charged as aforesaid, it shall be declared that the same sum shall be vested in, and paid to such child or children, or some or one of them, in manner following, (that is to say); the same to vest in, and after the decease of the said [*gentleman*], to be paid to such child or children, or such one or more, exclusive of the other or others of them, at such age or time or respective ages or times, in such parts or shares, and with such provisions and dispositions over, (the same being in favor of the others or other of such children), as the said [*gentleman*], by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil thereto, to be by him signed and published in the presence of and attested by three or more witnesses, shall direct or appoint; *And* in default of such direction or appointment, and so far as the same, if incomplete, shall not extend, the said sum of pounds, or such unappointed part, to vest in such of the said child or children (other than and besides an eldest or only son so for the time being entitled as aforesaid) as shall be a younger son or sons at his or their age or respective ages of twenty-one years, and as shall be a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, but that the payment of the said portions shall be postponed till after the decease of the said [*gentleman*]; *And* in the same deed there shall be inserted clauses of survivorship and accruer, and the

and to appoint hereditaments to trustees for a term of 1000 years, for securing the same;

the portions to vest in children, and to be paid at such times as gentleman should by deed or will appoint;

and in default of appointment, to vest at twenty-one, or if a daughter, at twenty-one or marriage;

but the payment to be postponed, with all usual provisions.

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usual provisions for interest, by way of maintenance and education, and for the advancement of the child or children for whom the portion or portions shall be provided, during the minority or respective minorities of a younger son or sons, and during the minority, or discoverture, or minorities or discovertures of a daughter or daughters. IN WITNESS, &c.

OF A LIFE ESTATE, WITH XERCISE OF POWERS.

MARRIAGE SETTLEMENT *of a* MANOR, *Tithes, and other Hereditaments; Recital of Indentures of Lease and Release, limiting Life Estate to Gentleman, and giving him Powers of Jointuring and Portioning younger Children; First Witnessing Part, whereby Gentleman conveys the Premises (subject to Two Mortgage Debts) to First Trustees, for a Term of Ninety-Nine Years, to commence after the Marriage, Upon trust to raise Pin-money for the Lady, and pay the Residue of the Rents to the Gentleman; Second Witnessing Part, whereby Gentleman appoints the Sum of Pounds to Lady, by way of Jointure; Third Witnessing Part, whereby he limits a Term to Second Trustees, to secure Jointure; Fourth Witnessing Part, whereby Gentleman charges the Premises with the Sum of Pounds, for Portions to be paid to the Children in such manner as Gentleman should appoint, and in Default of Appointment, to all equally; Fifth Witnessing Part, whereby Gentleman charges the Premises with Sums for the Maintenance, &c. of the Children; Sixth Witnessing Part, whereby Gentleman appoints a Term of Five Hundred Years to First Trustees, to secure the Payment of the Portions and Main-*

tenance; PROVISO, *that Sum for Portions shall not be raised until a Portion becomes due;* COVENANTS *for Title.*

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THIS INDENTURE, made the day of BETWEEN [*gentleman*] of, &c. of the first part; [*father of* [*lady*] of, &c. and [*lady*] of, &c. of the second part; [*first trustees*] of, &c. of the third part; and [*second trustees*] of, &c. of the fourth part; WHEREAS by indentures of lease and release, bearing date respectively the and days of , the release being made between, &c. ALL those the manors, &c. and all mills, lands, tenements, meadows, feedings, pastures, woods, commons, courts leet, and view of frank-pledge, liberties, advowsons, donations, rights of patronage, rents, reversions, services, tithes, emoluments, and hereditaments whatsoever, to the said manor and premises belonging, with their and every of their rights, royalties, members, and appurtenances, are, and stand limited and settled (subject to certain mortgage debts of pounds and pounds in the said indenture of release mentioned, and the interest thereof respectively), *To the use* of the said [*gentleman*] and his assigns for his life, without impeachment of waste, with a limitation *To the use* of the said [K. E.] and [W. E.] and their heirs, during the life of the said [*gentleman*], upon trust to preserve the contingent uses and estates thereinafter limited from being destroyed, and after his decease, *To the use* of the first and every other son of the body of the said [*gentleman*], severally and successively in tail male, with several remainders over, with power (*a*) to the said [*gentleman*], by any deed or deeds to be by him sealed and delivered in the presence of and

Parties.

Recital of indentures of lease and release, whereby the premises stand limited,

(subject to mortgages,)

to the use of gentleman for life; remainder to trustees to preserve; remainders over;

with power to gentleman to jointure and

(*a*) A late decision of great interest may here be noticed:—The effect of a conveyance by a tenant for life, of real estate, on his power, has been elsewhere enquired into; see 2 Byth. 312, Stewart's edition; and Vol. VI, 417; but it remained doubtful how far the assignment by a person having a life interest in stock or personalty, affected his power over the principal fund. This point came under discussion in the case of *Noel* v. *Lord Henley*, where a testator by his will devised his real estates to trustees, in trust for sale, and after payment of certain sums, he directed the residue of the money arising from the sale

Whether an assignment of a life interest in personalty affects powers over it.

Noel v. *Lord Henley.*

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portion younger children.

attested by two or more credible witnesses, to grant, limit, or appoint, to and to the use of any woman or women whom he may happen to marry or take to wife, for her or their lives, and for or in the nature of a jointure or jointures for her and them, and in bar, or without being in bar of her or their dower, any annual sum or yearly rent-charge, not exceeding pounds by the year, tax free, and without any deductions to be issuing out of and chargeable upon all or any part of the said manors, reputed manors, messuages, lands, tenements, tithes, hereditaments and premises, with such powers and remedies for recovering such annual sum, or yearly rent-charge when in arrear, and such terms of years for better securing the due payment thereof, to take effect immediately after the decease of the

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to be invested in the public funds, or on real security, at interest; and as to one moiety of the funds, in trust to pay the dividends and interest to the plaintiff T. Noel during his life, and after his decease to pay his wife an annuity of two hundred pounds for her life, and subject thereto, upon trust, to pay and transfer the said moiety of the stocks, funds, and securities, between or among the children of T. Noel, as he should appoint, and in default of appointment, to the children equally. The will also contained a power, authorising the trustees at any time or times after the decease of the plaintiff T. Noel, or in his life-time, in case he should so direct by any writing or writings under his hand, to levy and raise any part or parts (not exceeding one half) of the portion or portions intended to be thereby provided for the children. The suit was instituted for carrying into execution the trusts of the will, and the estates were sold under the direction of the court. By indenture dated 15th September, 1824, made between T. Noel, of the first part; t e petitioner S., of the second part; and the petitioner M., his trustee, of the third part; T. Noel granted to S. a redeemable annuity of ninety-two pounds for T. Noel's life, and by the same indenture assigned the moiety of the dividends from time to time during his life, to bec me due on a sum of stock, standing in the name of the accountant general, in trust in the cause, to the account of the produce of the trust estates of the testator, and to arise from any securities in which the monies produced from the said moiety, to which he was entitled during his life, might be invested, unto M., his executors, administrators, and assigns, in trust for securing the annuity, and to pay the residue unto T. N. A petition was presented by the annuitant and M. his trustee, praying that an order dated 24th November, 1824, by which a part of the stock had been ordered to be raised and paid unto T. Noel the son, by

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said [*gentleman*], as to him the said [*gentleman*] shall seem meet; *And* with a power for the said [*gentleman*], by any deed or deeds, instrument or instruments in writing, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, and with or without power of revocation, to charge the said manors, or reputed manors, &c. thereinbefore mentioned to be thereby granted and released, or intended so to be, or any part or parts thereof, with and for the raising and payment of any such principal sum or sums of money as the said [*gentleman*] shall think fit, not exceeding in the whole the principal sum of four thousand pounds of lawful money of Great Britain and Ireland, for the portion of all and every or any of the daughter or daughters, and younger son, or younger sons, which the said [*gentleman*] shall happen to have by any

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virtue of an appointment made by his father, in pursuance of the power of advancement (but which had not yet been raised), might be discharged, and that the whole of the interest and dividends assigned by the indenture of grant of annuity, might be paid to M. on the trusts thereby declared.

It was contended for the petitioners, that the dividends of the whole fund to which Noel the father was intitled for life being assigned as a security for S.'s annuity, the court could not dispose of any part of that fund without his consent; and of this opinion was the Lord Chief Baron *Alexander*, who thought that the simple question here was, whether a tenant for life, with a power of appointment for the advancement of his children, could by his act preclude himself from exercising that power. On reference to the different authorities, he said it seemed quite contrary to all of them, and to the principle on which those cases had been decided, that a tenant for life, having assigned the dividends of the whole of the funds to which he is entitled for life as a security, should be at liberty to lessen that security, by exercising a power for advancement, and consequently diminishing the fund from which those dividends arise; and he therefore discharged the order of the 24th Nov. 1824.

Conclusions from the case.

It would not be stretching the principles of this case too far, perhaps, to say, that the exercise of powers to vary securities, or to appoint new trustees, would also be restrained. And in assignments of life interests, where such powers exist in the assignor, it is always usual and proper to insert a covenant by him, that he will not consent to vary the funds, or appoint new trustees, without the assignees' or mortgagees' assent.

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woman or women with whom he may happen to marry, to be paid and payable to or among all and every the daughter or daughters, and younger son or other sons, or to any one or more of them, in such parts, shares, and proportions, and at such time or times, and in such manner, as to him the said [*gentleman*] shall seem meet; *And* also by the same deed or deeds, writing or writings, or any other deed or deeds, writing or writings, to be so sealed and delivered, and attested as aforesaid, to charge all or any part or parcel of the same hereditaments and premises, with or for the payment of such yearly sum or sums of money as he the said [*gentleman*] shall think fit, for the maintenance and education of all and every, or any of such daughter or daughters and younger son or younger sons, which he the said [*gentleman*] shall happen to have by any such woman or women as aforesaid, so as that the same do not exceed the interest of their respective portions, at the rate of four pounds by the year for every one hundred pounds; *And* also by the same deed or deeds, writing or writings, or by any other deed or deeds, writing or writings, so sealed and delivered, and attested as aforesaid, to make any lease or leases, demise or demises, to or to the use of any person or persons, as a trustee or trustees, and with or without power of revocation, as to him the said [*gentleman*] shall seem meet, of all or any part of the said manors and other hereditaments, for any term or terms, number or numbers of years, *Upon trust*, by mortgage or sale of the hereditaments in such leases or demises to be respectively comprised, or of any part thereof, to levy and raise such sum or sums of money as shall be so respectively charged on the said premises, or any part thereof, by him the said [*gentleman*], by virtue of the said lastly therein and hereinbefore mentioned power, the portion or portions of all and every, or any of such daughters or daughter, younger sons or younger son of him the said [*gentleman*], by such woman or women as aforesaid, and likewise to levy and raise any such yearly sum or sums of money as shall be so respectively charged on the said premises, or any part thereof, by him the said [*gentleman*], by virtue of the said last therein and hereinbefore mentioned power, for the maintenance and education of such daughter or daughters, younger

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son or younger sons of him the said [*gentleman*], so as nevertheless in every such lease and demise so to be made by the said [*gentleman*] as aforesaid, there be inserted an express proviso, whereby it shall be provided or declared to the effect following, (that is to say); that so soon as the trusts thereby declared shall be duly satisfied and performed, and the trustees thereby appointed shall be reimbursed all their costs, charges, and expenses, in or about the execution of the said trusts, the respective terms of years, estates, and interests thereby respectively granted or limited, shall cease, determine, and be void, to all intents and purposes whatsoever; (*Agreement for marriage as ante, p.* 400): AND WHEREAS upon the treaty for the said intended marriage, the said [*gentleman*] did agree to secure to be paid to the said [*lady*] and her assigns, during the joint lives of her and the said [*gentleman*], a clear annual sum of pounds, for her separate use, in the nature of pin money, and to exercise in manner hereinafter mentioned, the power of limiting a jointure, and charging portions for younger children, so by the said recited indenture of release given to him the said [*gentleman*] as aforesaid: NOW THIS INDENTURE WITNESSETH, that in consideration of the said marriage, and of the portion or fortune of the said [*lady*], and of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*gentleman*] paid, at or immediately before the sealing and delivering of these presents, (the receipt whereof is hereby acknowledged,) HE the said [*gentleman*] *Hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *Doth* grant, &c. unto the said [*trustees*], in, &c. (*lease for year*), and their heirs, ALL &c. (which manors or other hereditaments by the said indentures of lease and release are and stand limited to the use of the said [*gentleman*] and his assigns for his life as aforesaid, with their rights, members, and appurtenances,) *And* the reversion and reversions, *And* all the estate, &c. TO HAVE AND TO HOLD the said manors or reputed manors, tithes, hereditaments, and all and singular other the premises hereby granted and released, with their rights, members, and appurtenances, (subject to the said mortgage debts of pounds, and pounds), unto the said [*first*

Agreement for marriage, and that gentleman agreed to secure pin-money to wife, in exercise of his powers.

First witnessing part, whereby gentleman conveys to trustees

parcels.

Sweeping clause.

Habendum,

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trustees] and their heirs, to the uses hereinafter declared, (that is to say); *To the use* of the said [*first trustees*], their executors, administrators, and assigns, from and immediately after the said intended marriage shall be had and solemnized, for and during, and unto the full end and term of ninety-nine years, thenceforth next ensuing, and fully to be complete and ended, without impeachment of waste, if the said [*gentleman*] and [*lady*] shall jointly so long live, upon the trusts hereinafter declared of and concerning the same, (that is to say); *Upon trust* that the said [*first trustees*] and the survivor of them, his executors and administrators, do and shall yearly and every year, during the joint lives of the said [*gentleman*] and [*lady*], by and out of the rents and profits of the said manors and other hereditaments, (but subject and without prejudice to the said mortgage debts of pounds and pounds) levy and raise the annual sum of three hundred pounds of lawful money of Great Britain and Ireland, and pay, apply, and dispose of the same by quarterly payments on the four most usual feasts or days of payment in the year, (that is to say); the day of , &c. by even and equal portions, unto such person, &c. (*ante*, *p.* 413). *And upon this further trust*, that after payment, satisfaction, or discharge of the said annual sum of pounds, they the said [*first trustees*], and the survivor of them, his executors and administrators, do permit and suffer the said [*gentleman*] and his assigns, from time to time, during the joint lives of him and the said [*lady*], (but subject and without prejudice as aforesaid) to receive and take the residue and overplus of the rents, issues, and profits, of all and singular the manor and other hereditaments comprised in the said term of ninety-nine years, for his and their own proper use and benefit. PROVIDED ALWAYS nevertheless, and it is hereby agreed and declared, that the said [*first trustees*] and the survivor of them, his executors and administrators, shall not, after the decease of the said [*gentleman*], levy and raise any more than one year's arrears of the said annual sum of pounds, as shall then happen to be due and unpaid: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreement, so far as relates to the said [*gentleman*]

(subject to mortgages), after the solemnization of the marriage,

to the trustees for 99 years,

upon trust, during joint lives of gentleman and lady, to raise the sum of 300*l.*, and pay the same quarterly;

and upon this further trust, to permit gentleman to receive the residue of the rents.

Proviso that no more than one year's arrear shall be recoverable.

Second witnessing part, whereby gentleman, in exer-

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exercising in manner hereinafter mentioned the power of limiting a jointure by the said recited indenture of release given to him as aforesaid, and for the considerations aforesaid, and pursuant to and by force and virtue, &c. (*reference to power, as ante, p.* 533), and of all other powers and authorities in any wise enabling him in this behalf, HE the said [*gentleman*], by this deed or instrument in writing, sealed and delivered by him in the presence of the persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by him the said [*gentleman*], *Doth* grant, limit, and appoint *To the use* of the said [*lady*], in case the said intended marriage shall take place and she shall survive the said [*gentleman*], (but subject to the said mortgage debts of pounds and pounds) one yearly sum of pounds of lawful money of Great Britain and Ireland, to be yearly issuing out of and chargeable upon all and singular the manors and other hereditaments hereby bargained and sold, or intended so to be, with the rights, members, and appurtenances; To HAVE, HOLD, RECEIVE, AND TAKE, the said annual sum or yearly rent-charge of pounds, from the time of the decease of the said [*gentleman*], (but subject and without prejudice as aforesaid) unto the said [*lady*] and her assigns, for and during the term of her natural life, for her jointure, and in full recompence, satisfaction, and bar of the dower and thirds which at the common law by custom, or otherwise, the said [*lady*] may or might otherwise have or claim of, in, to, or out of any manors or other hereditaments of which the said [*gentleman*] shall during the said coverture be seised for an estate of inheritance; *And* to be paid by four equal quarterly payments, on the day of, &c. (*naming the days*) the first quarterly payment to be made on the day of : (*Powers of entry and distress, as ante*, p. 406, 407.) AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, and for the better securing the due payment of the said annual sum or yearly rent-charge of pounds, hereby limited and appointed unto the said [*lady*] and her assigns, for and during the term of her life as aforesaid; *And* for the further consideration of ten shillings of such lawful money as afore-

exercise of his power of jointuring,

appoints, to the use of the lady,

a yearly sum of —*l.*

Habendum, after decease of gentleman, for the life of the lady, for her jointure.

Further witnessing part, whereby gentleman, in further exercise of his power,

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said, by the said [*first trustees*] to the said [*gentleman*] paid at &c., the receipt &c., and by force and virtue, and in exercise and execution of the power and authority to him the said [*gentleman*] for this purpose by the said in part recited indenture of release given or limited as aforesaid, and of all other powers and authorities enabling him in this behalf, HE said [*gentleman*], by this deed or instrument in writing, so sealed and delivered by him, and intended to be attested as aforesaid, *Doth* grant, limit, and appoint unto the said [*second trustees*], their executors, administrators, and assigns, the said manors and other hereditaments limited, to the use of him the said [*gentleman*] and his assigns for the term of his natural life, with such powers as aforesaid, with their rights, members, and appurtenances, TO HAVE AND TO HOLD the said manors, and all and singular the hereditaments hereby granted and released, or intended so to be, with their rights, members, and appurtenances, (but subject, &c.) unto the said [*second trustees*], their executors, administrators, and assigns, for and during, and unto the full end and term of one hundred years, to commence and be computed from the decease of the said [*gentleman*], and thenceforth next ensuing, and fully to be complete and ended, without impeachment of waste, *Upon the trusts*, and subject to the provisoes hereinafter contained of and concerning the same, that is to say; (*Upon trust to raise the jointure, and allow remainder man to receive the residue of the profits, as ante, p.* 541; *proviso for cesser, ante, p.* 542); AND THIS INDENTURE FURTHER WITNESSETH, that in further performance of the said agreement, so far as relates to his the said [*gentleman's*] exercise in manner hereinafter mentioned, of the power by the said indenture of release given to him the said [*gentleman*] to charge the said manors and other hereditaments, with portions for his daughters and younger sons; *And* for the considerations aforesaid, and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to him the said [*gentleman*] for this purpose by the said recited indenture of release given or limited as aforesaid, and of all other powers and authorities in anywise enabling him in this behalf, HE the said [*gentleman*], by this deed or instrument in writing, sealed and delivered by him, and

appoints premises to trustees.

Habendum for 100 years, to commence from the decease of gentleman.

Third witnessing part, whereby gentleman, by virtue of his power of portioning, charges the premises with the sum of —*l.* and interest, for the portions of daughters and younger sons;

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attested as hereinbefore is mentioned, *Doth* charge all and singular the manors and other hereditaments by the said hereinbefore recited indenture of release limited to him the said [*gentleman*] and his assigns for the term of his natural life, with such powers as aforesaid, and their rights, members, and appurtenances; *And* the reversion or reversions, &c., (but subject and without prejudice to the said mortgage sums of pounds and pounds), with the payment of the principal sum of pounds of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of pounds by the year for one hundred pounds, for the portion or portions of all and every such daughter or daughters, younger son or younger sons, in the parts, shares, and proportions, at such time or times, and in such manner as hereinafter mentioned, (that is to say); if there be but one child of the said [*gentleman*] by the said [*lady*], (other than and except an eldest or only son for the time being entitled in possession or in remainder expectant upon the decease of the said [*gentleman*] to the said manors and other hereditaments comprised in the hereinbefore recited indenture of release and settlement), then such sum of pounds, to go and be payable to such one child, at such time or day, or times or days, as the said [*gentleman*], by any deed or deeds, instrument or instruments in writing, to be sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, to be signed and sealed in the presence of and attested by three or more credible witnesses, shall direct or appoint; and in default of such direction or appointment, such sum to be vested in such one child, (not being an eldest or only son, for the time being entitled as aforesaid), being a son, at his age of twenty-one years, or being a daughter, at that age or day of marriage, which shall first happen, and to be paid to him or her, on or at the said age, day, or time of marriage, if the same shall not happen in the life-time of the said [*gentleman*]; but if the same shall happen in his life-time, then after his decease; *And* in case there shall be two or more such children, (other than and except an eldest or only son so entitled as aforesaid), then such sum of pounds, to be divided between or amongst all and every or such one

if but one such child,

the sum of —*l.* to go to such one child, as gentleman shall appoint;

and in default, to vest in child at 21, or if a daughter, at that age or marriage, and to be paid after the decease of gentleman;

and if more than one, then the sum of —*l.* to go to them in such manner

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as gentleman shall appoint.

or more of such children, exclusively of the others or other, in such parts, shares, and proportions, and at such ages, days, or times, and subject to such provisoes and conditions, and with such limitations over, and charged and chargeable with the payment of such annual sum or sums of money, or with such sums in gross, (such limitations over, or annual sum or sums in gross, to be for the benefit of some one or more of the said children, except an eldest or only son so entitled as aforesaid), and in such manner as the said [*gentleman*] shall at any time during his life, by any such writing or writings under his hand and seal, attested as aforesaid, or by his last will and testament, so signed, published, and attested as aforesaid, direct or appoint; *And* in default of such direction or appointment, and so far as the same shall not extend, the said sum of pounds, or so much thereof, concerning which no such direction or appointment shall be made, to be divided between or amongst all such children (except an eldest or only son, so entitled as aforesaid,) in equal shares and proportions; the share or shares of such of the said children as shall be a son or sons, to become a vested or transmissible interest in him or them respectively, at his or their respective age or ages of twenty-one years; *And* the share or shares of such of the said children as shall be a daughter or daughters, to become a vested or transmissible interest in her or them respectively, at her or their respective age or ages of twenty-one years, or respective days of her or their marriage, which shall first happen, if the same shall not happen in the lifetime of the said [*gentleman*], but if the same shall happen in his lifetime, then immediately after his decease: (*Provision for survivorship and hotchpot, as ante*, p. 418.) AND THIS INDENTURE MOREOVER WITNESSETH, that in pursuance and further performance of the said agreement, so far as the same relates to charging the said manors and other hereditaments, with yearly sums of money for maintenance and education of his daughters and younger sons; *And* for the considerations aforesaid, and pursuant to, and by force and virtue, and in exercise and execution of the power and authority to him for this purpose given by and in the hereinbefore in part recited indenture; *And* of all other powers enabling him in this behalf, HE the said [*gentleman*] doth by this deed or

and in default of appointment, to the children equally, to be vested at twenty-one, but not to be paid until the death of gentleman.

Fifth witnessing part, whereby gentleman, in pursuance of his power, charges the premises with the payment of such sums for the maintenance of the younger children,

instrument in writing, sealed and delivered by him, and attested as aforesaid, charge all and singular the manor and other hereditaments, by the said hereinbefore in part recited indenture limited to the said [*gentleman*] for his life, with such powers as aforesaid, with their rights, members, and appurtenances, (but subject and without prejudice to the said mortgage debts of pounds and pounds) with the payment of such sums of money for the maintenance or education of all the daughters and daughter, and younger sons or younger son, which he the said [*gentleman*] shall have by the said [*lady*], until the said principal sum of pounds shall become payable, as hereinafter is mentioned (that is to say); with such yearly sum or sums of money as the said [*gentleman*], by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or by any codicil or codicils thereto in writing, to be by him signed and published in the presence of and attested by the like number of credible witnesses, shall from time to time direct and appoint, not exceeding what the interest of the portion or portions intended to be hereby provided for such child or children respectively would amount to, after the rate of four pounds for every one hundred pounds by the year; *And* in default of such direction or appointment, then with such yearly sum or sums of money, not exceeding the amount of such interest as aforesaid, as the guardian or guardians of such child or children shall think fit, the said yearly sum or sums of money for maintenance, to be free and clear of and from all deductions for taxes, or otherwise howsoever, and to be raised or paid by four equal quarterly payments, on or at the days or times hereinafter mentioned, (that is to say); the twenty-fifth day of March, the twenty-fourth of June, the twenty-ninth of September, and the twenty-fifth of December in every year, and the first payment of the said quarterly payments to be made on such of the said days as shall next happen after the decease of the said [*gentleman*]. And this indenture further witnesseth, that for further securing the said sum of pounds, so secured on the said manors and other hereditaments

OF A LIFE ESTATE, WITH EXERCISE OF POWERS.

until their portions shall be paid, as gentleman shall appoint, not exceeding the interest of their portions;

and in default of appointment, the amount of such interest, free from all deductions.

Sixth witnessing part, whereby gentleman for se-

OF A LIFE ESTATE, WITH EXERCISE OF POWERS.

for portions, and the annual sum or sums of money secured on the said manors and other hereditaments, for the maintenance and education of the daughters and younger sons of the said [*gentleman*] by the said [*lady*], as aforesaid, (*and for a nominal consideration from trustees to gentleman, he appoints the hereditaments to first trustees for the term of five hundred years, as ante, p.* 553;) *Upon trust*, that when and in case the said sum of pounds should become payable, under and by virtue of the trusts hereinbefore declared of and concerning the same, the said [*first trustees*], or the survivor of them, his executors, administrators, or assigns, do and shall, by sale or mortgage of the manors and other hereditaments comprised in the said term of five hundred years, or any of them, or any part thereof, for all or any part of the same term, levy and raise the said sum of pounds, or so much thereof as shall have become payable, together with such interest for the same as aforesaid, and pay the same to, between, or amongst the younger son or younger sons, daughter or daughters, of the said [*gentleman*], by the said [*lady*], on or at such ages, days, or times, in such manner, and if more than one, in such shares and proportions, as hereinbefore is mentioned and appointed for payment of the same, together with such sum or sums as are mentioned, or intended to be provided for the maintenance of the younger son or sons, daughter or daughters, of the said [*gentleman*] by the said [*lady*], as aforesaid, and pay the same to the guardian or guardians of such child or children respectively, to be by them or him applied in manner hereinbefore mentioned, of and concerning such sum or sums of money respectively: PROVIDED ALWAYS, and it is hereby further agreed, that the said [*first trustees*], and the survivor of them, his executors, administrators, or assigns, shall not sell, mortgage, demise, or dispose of any part or parts of the said manor and other hereditaments comprised in the said term of five hundred years, until some one or more of the said portions shall become payable, by virtue of and under the trusts hereinbefore expressed, and that such part of the rents, issues, and profits of the said manors and other hereditaments, as shall remain after the payment of the said annual sum or sums of money, hereby provided for or towards the maintenance of such child or children as aforesaid, shall,

curing portions, and maintenance, appoints a term to first trustees, upon trust, when the sum of —*l.* shall become payable, to raise the sum of —*l.*, and pay the same in such manner as is hereinbefore mentioned.

Proviso that no mortgage shall be made until a portion is payable, and until that time, the rents and profits shall be received by the remainderman.

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until some one of such portions shall become payable as aforesaid, be received and taken (but subject and without prejudice, as hereinbefore is mentioned), by the person or persons who for the time being shall be entitled to the hereditaments comprised in the said term of five hundred years, in reversion or remainder immediately expectant on the determination of the same term, to and for his and their own proper use and benefit: PROVIDED ALWAYS, nevertheless, and it is hereby agreed and declared, that in case there shall be no such child or children of the said intended marriage, who shall under the provisions hereinbefore contained become entitled to a portion or portions as aforesaid, or there being such child or children, in case all of them shall happen to die before any of them, being a daughter or daughters, shall attain the age of twenty-one years, or be married, or before any of them being a son or sons, shall attain the age of twenty-one years, or before such other time or times as shall be appointed for vesting his, her, or their portion or portions respectively, as aforesaid; or if the person or persons to whom the estate of freehold or inheritance of and in the said manor and hereditaments comprised in the said term of five hundred years in remainder or reversion expectant on the determination of the same term, shall, for the time being belong, do and shall well and truly pay, or cause to be paid, to the said [*first trustees*], or the survivor of them, his executors and administrators, or well and sufficiently to their or his good liking, secure to be paid the portion or portions hereinbefore provided, or intended to be provided for such child or children respectively, or for so much thereof as shall remain unpaid (all such interest for maintenance being first raised and satisfied); *And* in case all and every the trusts declared as aforesaid of and concerning the said term of five hundred years, shall be duly satisfied and performed, or shall be discharged, either by being incapable of being performed, or by any other means; and they the said [*first trustees*] shall be fully reimbursed and satisfied all costs, charges, and expenses to be occasioned by or relating to the said trusts of the said term of five hundred years, the said term shall, as to such of the hereditaments comprised therein as shall

Proviso, that if there shall be no children who shall become entitled to portions, or if the remainder man shall pay them, and also the maintenance,

and all the other trusts of the term shall be satisfied, term shall cease.

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not have been mortgaged or sold for the purposes aforesaid, cease and determine; *And* as to such of the hereditaments comprised therein as shall have been mortgaged or sold for the purposes aforesaid, wait upon and attend the freehold and inheritance of the premises so mortgaged or sold; *And* the said [*gentleman*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*first trustees*], and also with and to the said [*second trustees*], their respective executors or administrators, in manner following, (that is to say); that he the said [*gentleman*] hath in himself, at the time of the sealing and delivering of these presents, good right, full power, and lawful and absolute authority to grant, bargain, limit, appoint, lease, and demise the said manor and other hereditaments, to the said several [*trustees*], their executors, administrators, and assigns, for the said term of ninety-nine years, one hundred years, and five hundred years, upon the trusts and for the intents and purposes, and in manner respectively hereinbefore declared and mentioned of and concerning the same terms respectively, and to limit the same yearly sum or annual rent-charge of pounds to the said [*lady*] and her assigns, for the term of her natural life, to take effect and be paid and payable in such manner, and with such powers and remedies for the recovery and compelling payment thereof, when in arrear, as hereinbefore is mentioned and contained, and also to subject and charge the said manors and other hereditaments with the payment of the same sum of pounds, and interest, as hereinbefore mentioned; *And* that free and clear, and freely, clearly, and absolutely acquitted, exonerated, and for ever discharged of and from all charges and incumbrances whatsoever, (save and except such as are mentioned and referred to by the said hereinbefore recited indenture of release and settlement, or such as have been made or created by virtue and in exercise of the powers therein contained;) *And* moreover that he the said [*gentleman*], and all persons claiming or to claim by, from, or under him, shall and will, from time to time, and at all times hereafter, at the request of the said [*first and second trustees*], or any or either of them, their or any of their

Covenant by gentleman, that he hath good right to demise the hereditaments for the term of 99, 100, and 500 years, and to limit jointure,

and to charge with portions,

and for further assurance,

OF A LIFE ESTATE, WITH EXERCISE OF POWERS.

executors, administrators, and assigns, or any of the parties interested in the premises, but at the proper costs and charges in the law of him the said [*gentleman*], his executors or administrators, make, do, and execute, or cause to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, and things, for the better and more effectually bargaining, selling, granting, limiting, appointing, leasing, and demising the said manors, hereditaments, and premises, unto the said [*trustees*], their executors, administrators, and assigns, for the residue then to come and unexpired of the said terms of ninety-nine years, one hundred years, and five hundred years respectively, upon the trusts and for the intents and purposes hereinbefore declared of the same terms respectively; and for the further and more effectually limiting, assuring, and confirming the said annual sum or yearly rent-charge to the said [*lady*] and her assigns, for the term of her natural life, as hereinbefore is mentioned; *And* also for better and more effectually subjecting and charging the said manors, hereditaments, and premises with the said sum of pounds, in manner aforesaid, as by the said [*trustees*], or any or either of them, or any or either of their executors, administrators or assigns, or any of the parties interested in the premises, their or either of their counsel in the law, shall be reasonably devised and required. In witness, &c.

OF MONIES ARISING FROM REAL ESTATE, &c.

MARRIAGE SETTLEMENT, *whereby the Trusts of* MONIES, *arising from the Sale of the* REAL ESTATE *of the Gentleman, which, by another Indenture, was directed to be sold, and of two several Sums of Stock belonging to the Gentleman, are declared to be for the Benefit of the Gentleman and the Children of the Marriage, with all usual Clauses.*

THIS INDENTURE, made the day of , Parties. BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; and [*trustees*] of, &c. of the third part: WHEREAS a marriage hath been agreed upon, and is intended to be solemnized between [*gentleman*] and [*lady*]; *And* upon the treaty for the said marriage it was agreed, that a messuage and other hereditaments in , in the parish of, &c. of and to which the said [*gentleman*] is seised or entitled in fee simple, with the appurtenances, should be vested by him in trustees, upon trust, to sell the same; and that the money arising from the sale thereof should, together with two several sums of two thousand eight hundred pounds three per cent. consolidated bank annuities, and two hundred pounds, like annuities, to which the said [*gentleman*] is absolutely entitled, be settled upon the trusts and for the purposes hereinafter declared concerning the same respectively; *And* it was also agreed, that the property to which the said [*lady*] is now or may hereafter be entitled, during the intended coverture, should be settled for the benefit of the said [*gentleman*], and particularly of the said [*lady*], and her daughter by her late husband, and also for the benefit of the issue of the said intended marriage: AND WHEREAS the said [*gentleman*], in pursuance and part performance of the said agreement, on his part, hath, by indentures of lease and release, the lease bearing date the day next

Agreement for marriage, and that certain real and personal estate of gentleman should be vested in trustees upon the trusts hereinafter mentioned;

and that gentleman, by indentures of lease and release, hath conveyed real estate to trustees,

before the day of the date of the release, and the release (*a*) bearing even date with these presents, and made, or expressed to be made, between the same persons as are parties to these presents, with the privity and approbation of the said [*lady*], conveyed the said messuage and other hereditaments in aforesaid, with their appurtenances, unto and to the use of the said [*trustees*], their heirs and assigns, in trust for the said [*gentleman*], his heirs and assigns, until the said intended marriage shall be solemnized, and after the solemnization thereof, *Upon trust*, to sell the same in the manner prescribed by the said indenture of release now in recital, with the consent of the said [*gentleman*] and [*lady*], during their lives, and of the survivor of them, during his or her life, and after the decease of such survivor, at the discretion of the said trustees or trustee; *And* it is by the said indenture of release now in recital declared, that the said [*trustees*], and the survivors and survivor of them, and the heirs and assigns of such survivor, should, with and out of the money arising from the sale of the said messuages and hereditaments, pay and satisfy all the costs, charges, and expenses attending or in any wise relating to the trusts thereby created, and should stand and be possessed of the residue of the said monies, upon and for such trusts, intents, and purposes, and with and subject to such and the same powers, provisoes, agreements and declarations, as should be expressed and contained, of and concerning the same, by an indenture therein mentioned to be already prepared and engrossed, and to bear even date therewith, and to be made between the same persons as are parties hereto, meaning thereby this present indenture; *And* it is by the said indenture of release now in recital declared, that in the mean time, and until the said messuage and other hereditaments should be sold, the rents, issues, and profits thereof should be paid and applied to the person or persons, and in the manner to whom and in which the

OF MONIES ARISING FROM REAL ESTATE, &c.

in trust for gentleman until marriage, and after marriage, upon trust to sell,

and to stand possessed of proceeds;

to pay all expenses, and stand possessed of residue, upon the trusts declared by another indenture (meaning the present deed);

and by the indenture of release it is declared, that until premises shall be sold, the rents shall be applied in the manner in

(*a*) This indenture is not inserted as a separate form, as it is similar to the precedent inserted, *ante*, 518, except that the gentleman is the grantor, instead of the father of the lady.

Reference to other form.

OF MONIES ARISING FROM REAL ESTATE, &c.

interest, dividends, and annual produce of the monies arising from such sale, should be directed to be paid and applied in and by the indenture thereinbefore referred to, meaning this present indenture; *And* in the said indenture of release is contained a power, enabling the said [*gentleman*] and [*lady*], and the survivor of them, and the executors or administrators of such survivor, to change the trustees, similar to the power for that purpose hereinafter contained: AND WHEREAS the said [*gentleman*] hath transferred the said sums of two thousand eight hundred pounds three per cent. consolidated bank annuities, and two hundred pounds like annuities, into the names of the said [*trustees*] in the books of the governor and company of the bank of England, as they the said [*trustees*] do hereby respectively admit and acknowledge: AND WHEREAS by an indenture of release and assignment already prepared and engrossed, and bearing or intending to bear even date with these presents, the said fortune or property of the said [*lady*], hath or is intended to be settled, in the manner hereinbefore agreed upon. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*gentleman*], and in consideration of the said intended marriage, and of the settlement so made, or intended to be made, of the fortune or property of the said [*lady*], *It is hereby agreed and declared* between and by the parties to these presents, that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of and interested in the monies to arise from the sale of the said messuages and other hereditaments, to be made pursuant to the trusts for that purpose contained in the firstly recited indenture of release, and which shall remain after payment of the costs, charges, and expenses attending or in anywise relating to the trusts of the same indenture, and also of and in the said two several sums of two thousand eight hundred pounds three per cent. consolidated bank annuities, and two hundred pounds like annuities, so respectively transferred into the names of the said [*trustees*] as aforesaid, *Upon* and for the trusts, intents, and purposes, and with, under, and subject to the powers,

which the interest is directed to be paid by this present indenture.

that gentleman has transferred two sums into the names of trustees in the bank books;

that by indenture of even date, lady's property is agreed to be settled.

Testatum,

whereby it is agreed, that trustees shall stand possessed of monies to arise from sale, and of the sums so transferred as aforesaid;

provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same (that is to say); *As* to the said sums of two thousand eight hundred pounds three per cent. consolidated bank annuities, and two hundred pounds like annuities, and the stocks, funds, and securities in which the same are invested, *In trust* for the said [*gentleman*], his executors, administrators, and assigns, until the solemnization of the said intended marriage; *And* as to the monies to arise from the sale aforesaid, after payment of the costs, charges, and expenses as aforesaid, *Upon trust* that they the said [*trustees*], and the survivors and survivor of them, and the heirs or assigns of such survivor, do and shall, with all convenient speed after the same shall be received by them or him, lay out and invest the same monies in their or his names or name, in the parliamentary stocks or public funds in Great Britain, or upon government or real securities in England or Wales; *And* as to the same monies, after such first laying out and investing as aforesaid, and the stocks, funds, and securities upon which the same shall be so invested as aforesaid; *And* as to the said two several sums of two thousand eight hundred pounds three per cent. consolidated bank annuities, and two hundred pounds like annuities, after the solemnization of the said intended marriage, *Upon trust* that the said [*trustees*], and the survivors and survivor of them, his executors, administrators, and assigns, do and shall either continue the same respectively in their respective actual state of investment, or do and shall call in and convert the same into money, and lay out and invest the money arising thereby in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or upon government or real securities in England or Wales; *And* (*vary the same, ante, p.* 514): And it is agreed and declared between and by the parties hereto, that every laying out, investment, variation, or alteration as aforesaid, shall during the joint lives of the said [*gentleman*] and [*lady*], and the life of the survivor, be made with their, his, or her consent; *And* after the decease of the survivor, at the discretion of the said [*trustees*], and the survivors and survivor of them, his executors and administrators: And it is hereby agreed and declared, that

OF MONIES ARISING FROM REAL ESTATE, &C.

as to the sums

In trust for gentleman until marriage,

and as to monies to arise from sale, In trust to invest the same;

and as to all the trust monies,

upon trust, to vary the securities thereof.

Agreement that trustees shall stand possessed thereof upon trust for the benefit of gentleman and children.

OF MONIES ARISING FROM REAL ESTATE, &c.

the said [*trustees*], and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall stand and be possessed of and interested in all the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, *Upon* and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter contained (that is to say); (*In trust for gentleman for life; then for lady for life; then the trust monies to go to such one or more of the children as they shall jointly appoint; in default, as survivor should appoint; in default of such last mentioned appointment, for all the children at twenty-one, or if daughters, at that age or marriage; maintenance and accumulation clauses; and if no child, to gentleman absolutely, as ante, p.* 507, 509, 510. *Advancement clause, as ante, p.* 509. *Clause to convert and reconvert personal and real estate, as ante, p.* 510. *Trustees' receipts to be sufficient discharges. Trustees clauses, as ante, p.* 511, 512.) IN WITNESS, &c.

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

MARRIAGE SETTLEMENT *of two small Sums of* STOCK, *the one the Property of the Gentleman, and the other of the Lady: the* SUM *belonging to the* GENTLEMAN, *being transferred to Trustees, upon Trust, that the Lady may receive the Interest for her Life, for her separate Use, and after her Decease, that Gentleman might receive the Interest for his Life, and the* SUM *belonging to the* LADY *being transferred to Trustees upon Trust, to pay the Interest to Gentleman, until his Bankruptcy, Insolvency, or any attempt at Anticipation, and then to the separate Use of Lady: And as to both the principal Sums, upon Trust for such Children and Grand-Children of the Marriage, as Gentleman and Lady, or Survivor, shall appoint, and in Default of Appointment, to all equally.* PROVISIONS *for Hotchpot, Survivorship, Maintenance, Accumulation, and Advancement; and if no Children, as to the Lady's Sum, upon Trusts for her Benefit; and as to the Gentleman's Sum, upon Trust for him absolutely; Usual Clauses and Provisions.* (A concise form).

THIS INDENTURE, made the day of , BETWEEN [*gentleman*], of, &c. of the first part; [*father of lady*], of, &c. of the second part; [*lady*] of, &c., spinster, (the eldest daughter of the said [*father of lady*]), of the third part; and [*trustees*] of, &c. of the fourth part. WHEREAS a marriage has been agreed upon, and is intended to be shortly solemnized between the said [*gentleman*], and [*lady*]; *And* upon the treaty for the said intended marriage, and in consideration thereof, it was agreed between the said [*gentleman*], [*father of lady*], and [*lady*], that the said [*father of lady*] should give the capital sum of

Parties.

Agreement for marriage.

Agreement that father of lady should give 1000*l.* stock in lieu of all claims of the

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

one thousand pounds, three and half pounds per cent. consolidated bank annuities, by way of portion or fortune with his said daughter, in lieu and satisfaction of whatever interest she might have, or be entitled to, under the settlement made previously to the marriage of the said [*father of lady*], with [E.], his then late wife, mother of the said [*lady*]; *And* that the said [*gentleman*] would advance so much money as would be sufficient to purchase the capital sum of five hundred pounds, three pounds per cent. consolidated bank annuities, and that the said several sums of one thousand pounds, and five hundred pounds, three pounds per cent. consolidated bank annuities, should be respectively transferred into the names of the said [*trustees*], upon the trusts hereinafter declared concerning the same; AND WHEREAS the said [*father of lady*], and [*gentleman*] in pursuance of the said agreement, have respectively, at or before the execution of these presents, transferred into the names of the said [*trustees*], in the books of the governor and company of the bank of England, the said sums of one thousand pounds, and five hundred pounds three per cent. consolidated bank annuities, and the same several bank annuities are now standing in the names of the said [*trustees*] accordingly, as they do hereby acknowledge. NOW THIS INDENTURE witnesseth, that for the considerations hereinbefore mentioned, it is hereby agreed and declared between the said parties, that the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, shall stand possessed of the said sum of five hundred pounds, three pounds per cent. consolidated bank annuities, and the interest, dividends, and annual produce thereof, *In trust* for the said [*gentleman*], until the solemnization of the said marriage, and should in like manner be possessed of the said sum of one thousand pounds, three pounds per cent. consolidated bank annuities, and the dividends thereof, in trust for the said [*father of lady*], until the solemnization of the said marriage, and after the solemnization thereof, then upon trust, during the natural life of the said [*lady*], to receive the interest, dividends, and annual produce of the said sum of five hundred pounds, three pounds per cent. consolidated bank annuities, and dispose of the same to such person or

lady under a settlement.

Agreement by gentleman to give 500*l.* stock.

Transfer of the same into the names of trustees.

Testatum, whereby it is declared that the trustees shall stand possessed of the sum of 500*l.* until the marriage, in trust for gentleman;

and as to the sum of 1000*l.*, until marriage,

In trust for lady's father, and after that time, as to the 500*l.* for the separate use of lady during her life;

persons, for such purposes, and in such manner, as she the said [*lady*], (notwithstanding her said intended coverture, or whether she should be covert or sole), by any note, draft, cheque, or other writing signed by her, shall from time to time (but not by way of anticipation), direct or appoint; and in default of, and subject to any such direction or appointment, shall pay the said dividends, or the unappointed part thereof, from time to time, into the proper hands of the said [*lady*], for her sole use, exclusive of her said intended husband, or any future husband of her the said [*lady*], and so that the same may not be subject to his debts, controul, or engagements; AND it is hereby declared, that any receipt or receipts, or any such note, draft, cheque, or writing, as hereinbefore mentioned, signed by her the said [*lady*], shall, notwithstanding her said intended or any other coverture of her the said [*lady*], be a sufficient discharge to the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, for the said interest, dividends, and annual produce, or for so much money on account thereof, as in every such receipt or receipts, or any such note, draft, cheque, or writing, as hereinbefore mentioned, shall be acknowledged to be received, or directed to be paid; *And* after the decease of the said [*lady*], then to empower, permit, and suffer the said [*gentleman*], and his assigns, to receive and take the said interest, dividends, and annual produce of the said sum of five hundred pounds, three pounds per cent. consolidated bank annuities, for and during the term of his natural life; *And* as to the interest, dividends, and annual produce of the said sum of one thousand pounds, three pounds per cent. consolidated bank annuities, after the solemnization of the said intended marriage, *Upon trust* from time to time to pay the same unto or permit the same to be received by the said [*gentleman*], and his assigns, for his and their own use and benefit, unless and until he shall be duly found and declared bankrupt (*a*), or shall become an insolvent debtor, or shall

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

the receipts of lady to be sufficient discharge,

and after her decease to permit the gentleman to receive the interest thereof for his life; and as to the sum of 1000*l.*, to pay the interest thereof to gentleman, until bankruptcy, insolvency, or anticipation of the same, or his death;

(*a*) As to what property may be settled as above, in order that the bankrupt laws may be defeated, see *ante*, p. 329. See another form to effect this purpose, *ante*, p. 500, 501.

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

execute a deed of composition with his creditors, or do some other open act of insolvency, or until he shall make or execute some deed or instrument, with intent to sell, assign, pledge, mortgage, or charge the said interest, dividends, and annual produce, or any part thereof, or otherwise prospectively dispose of the same or any part thereof, or until the death of him the said [*gentleman*], which shall first happen; *And* from and immediately after the happening of any one of the events aforesaid, *Then Upon trust* during the life of the said [*lady*], (in case she shall be living at the happening of any one of the aforesaid events), from time to time to pay, apply, and dispose of the whole of the interest, dividends, and annual produce of the said sum of one thousand pounds, three per centum consolidated bank annuities, for the sole and separate use of her the said [*lady*], in the same manner as was hereinbefore directed, with respect to the said interest, dividends, and annual produce of the said sum of five hundred pounds, three per centum consolidated bank annuities; And it is hereby agreed and declared, that any receipt or receipts, or any such note, draft, cheque, or writing, as hereinbefore is mentioned, signed by the said [*lady*], notwithstanding her said intended or any other coverture, shall be a sufficient discharge to the said [*trustees*], or the survivors or survivor of them, or the executors and administrators of such survivor, for the said herein last mentioned interest, dividends, and annual produce, or for so much money on account thereof as in every or any such receipt or receipts, or any such note, draft, cheque, or writing as hereinbefore is mentioned, shall be acknowledged to be received or be directed to be made; *And* as to the principal and capital of the said sums of five hundred pounds and one thousand pounds three per centum consolidated bank annuities, and the stocks, funds, and securities, wherein or upon which the same shall by virtue of the power hereinbefore contained, be respectively laid out and invested for the time being, after the determination of the several trusts and interests hereinbefore described and created of and concerning the same, *Upon trust* that the said [*trustees*], and the survivors and survivor of them, and the executors and administrators of such sur-

and after any of such events, upon trust to pay the dividends thereof to the separate use of lady, in the same manner as the sum of 500*l.*;

as to both the principal sums of 500*l.* and 1000*l.*, upon trust for all the children, or grand-children of the marriage, as the gentleman and lady shall by deed appoint;

vivor, shall stand possessed of and interested in the same respectively in trust for all and every, and any one or more of the child or children, grandchild or grandchildren, or other issue of the said intended marriage, (but such grandchildren or other more remote issue to be born before the making of any such appointment in their favour as hereinafter mentioned,) as the said [*gentleman*] and [*lady*], by any deed or deeds, writing or writings, with or without power of revocation, to be by both of them sealed and delivered in the presence of and attested by two or more credible witnesses, shall jointly direct or appoint, *And* in default of, or subject to any such direction or appointment, then as the survivor of them the said [*gentleman*] and [*lady*], during such time as such survivor should continue to be interested in the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, under the trusts hereinbefore declared, or any part thereof, by any deed or deeds, writing or writings, with or without power of revocation, to be by such survivor sealed, delivered, and attested in the manner hereinbefore mentioned, or by his or her last will and testament in writing, or any codicil or codicils thereto, or writing or writings purporting to be in the nature of his or her last will and testament, or any codicil or codicils thereto, to be signed and published by such survivor in the presence of and attested by the like number of credible witnesses, shall direct or appoint; *And* as to all and singular the said trust monies, stocks, funds, and securities, in default of any such direction and appointment concerning the same respectively, or as to such part or parts thereof as to which there shall not be any such direction or appointment, from and after the several deceases of the said [*gentleman*] and [*lady*], or the sooner determination of the interests hereinbefore limited to them respectively, or intended so to be, *Upon trust* to stand possessed of the said trust monies, stocks, funds, and securities, *In trust* as and for the portions of all and every the children of the said intended marriage, if there shall be more than one child, equally to be divided amongst them share and share alike, and if there shall be but one such child, then the whole to that one child: PROVIDED ALWAYS, and it is hereby agreed and declared

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

and in default of such appointment, as survivor should appoint;

and in default of such last-mentioned appointment,

In trust to stand possessed thereof for all the children equally.

Hotchpot clause.

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

between and by the parties to these presents, that no child or children of the said intended marriage, who shall take any part or share of and in the said trust monies, stocks, funds, and securities, by virtue of any such appointment as hereinbefore mentioned, shall take any further or other part or share of and in the same, or the unappointed part thereof, unless he or she or they shall be willing to bring his, her, or their appointed share into hotchpot, or unless the contrary thereof shall be declared in and by any such appointment or appointments as hereinbefore mentioned.

Declaration that the shares of the children shall be vested at 21, or if a daughter, at marriage, subject to any appointment of gentleman and lady to the contrary.

PROVIDED ALWAYS, and it is hereby agreed and declared, that in default of and subject to any such direction or appointment, in case any child or children of the said marriage, being a son or sons, shall attain his or their age or respective ages of twenty-one, or being a daughter, shall attain that age or be married under that age, in the life-time of the said [*gentleman*] and [*lady*], or of the survivor of them, and during the continuance of their, or one of their estates or interests under the trusts thereinbefore declared, then and from thenceforth all and every the right and interest, rights and interests of the same son or sons so attaining twenty-one, or of such daughter or daughters so attaining the like age, or marriage under that age, of and in the trust monies, stocks, funds, and securities, or any part thereof, whereof there should be no such direction or appointment as hereinbefore mentioned, shall respectively be considered a vested interest or vested interests in the same child or children, and should be transmissible as such to his, her, or their executors or administrators, notwithstanding such child or children should afterwards die before his, her, or their portion or portions should become due and payable.

Provision for survivorship and accruer.

[(*b*) PROVIDED ALWAYS, and it is hereby agreed and declared, that if any such child or children (being a daughter or daughters) should die under the age of twenty-one, and

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Where survivorship clause is necessary.

(*b*) As this precedent was originally drawn, it was liable to an objection which may very frequently be made to many modern drafts of a similar nature. The portions of the children, in default of appointment, were made to vest in them, if sons, at twenty-one; or if daughters, at twenty-one, or marriage; and the survivorship clause was *also*

OF SUMS OR STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

without being or having been married, or if any such child or children (being a son or sons) shall die under that age, then and so often as the same shall happen, in default of and subject to any such direction and appointment as hereinbefore mentioned, the portions hereby provided for each and every daughter so dying and not having been married, and for such son so dying as hereinbefore mentioned, other than what should or might have been paid or applied for the advancement of any such son or sons, under the power hereinafter given, shall from time to time go and accrue to such of the said children as shall be then surviving, and the respective executors, administrators, and assigns of such of them, (if any), as shall be dead, having in the manner hereinbefore mentioned acquired a vested interest or vested interests in his, her, or their original provision or provisions respectively, and shall be equally divided between such surviving children and such representatives of such deceased children as hereinbefore mentioned, if more than one, share and share alike, but such representatives taking any such share or shares as the said deceased children represented by them would have taken if living, and the same shall be payable and transferrable at such ages, days, and times as are hereinbefore directed, with respect to the original portion or portions of such child or children respectively, and such benefit of survivorship shall extend, as well to the surviving as to the original portions]. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that subject to any such direction or appointment as hereinbefore mentioned, and in the meantime from and after the several deceases of them the said [*gentleman*] and [*lady*], or the sooner determination of their estates and interests under the trusts hereinbefore declared, and from thenceforth until the principal and capital of the said trust monies, stocks, funds, and securities, or any portion or portions thereof, shall become payable or transferrable to any child or children, or other issue

Provision for the maintenance of the children out of the interest of their shares.

added. But where a specific time for the shares vesting is mentioned, the survivorship clause is unnecessary, because no share will vest until that time, and need not therefore be divested, and all the fund will vest in the children attaining twenty-one, or marrying before that age, *and in no others*. This clause may, therefore, be omitted.

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

of the said intended marriage, under the trusts hereinbefore declared, or under any appointment or appointments to be made under the powers hereinbefore contained, the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall receive the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, or of such portion, or respective portions thereof as should not have become payable or transferrable, as hereinbefore mentioned, as the same shall, from time to time, arise and become due and payable, and pay and apply the whole of such interest and dividends, or so much thereof as they or he shall think fit, for or towards the education or maintenance of such child or children, or other issue, as hereinbefore mentioned, presumptively entitled to a portion or portions, as hereinbefore mentioned, according and in proportion to his, her, or their several presumptive shares and interests of and in the said principal and capital of the said trust monies, stocks, funds, and securities, and shall, in case the whole of such interest, dividends, and annual produce shall not be so applied, lay out and invest, from time to time, the surplus thereof, in the names of the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, in the public stocks or funds, or upon government or real securities in England, at interest, and receive and invest the interest, dividends, and annual produce of the sums so invested, from time to time, and add interest to principal in order to form an accumulating fund, such accumulating to be annexed to, and go along with the principal or capital trust monies, stocks, funds, and securities, from the interest of which the same shall have been made. PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that notwithstanding the trusts hereinbefore mentioned, it shall be lawful for the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, at any time, either during the joint lives of the said [*gentleman*] and [*lady*], or the life of the survivor of them, and the continuance of his or her interest in the interest, dividends, or yearly produce of the said trusts monies, stocks, funds, and securities respectively, with their, his, or her consent in writing, under

Accumulation of the residue.

Power to trustees (in the life-time of gentleman and lady, with their consent) to advance the half of any son's portion for a commission in the army, or for placing him in trade, &c.

their, his, or her hands or hand, or after the decease of the survivor of them, at the determination of their respective estates, under the trusts hereinbefore mentioned, at the discretion, and of the proper authority of them the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, to call in and sell, or dispose of any part of the said trust monies, stocks, funds, and securities, thereby intended for the portion or portions of any son or sons of the said marriage, not exceeding in the whole for each or any such one son, one half of his presumptive portion at the time, and to pay and apply the monies so called in or produced for buying a commission in the army for any such son or sons, or for placing him or them in any profession, business or employment, or for his or their instruction therein, or otherwise for his or their advancement in the world, notwithstanding his or their portion or portions should not have become vested or payable; *And upon further trust*, that in case there shall be no issue of such intended marriage, or in case the said trust monies, stocks, funds, and securities, or any of them, or any part thereof, shall not become vested in any child or children, or other issue of the said marriage, either under the trusts hereinbefore declared, or under any appointment or appointments to be made in exercise of the powers hereinbefore contained, or either of them, then and in such case the said [*trustees*], and the survivor of them, his executors, administrators, and assigns, shall stand possessed of and interested in the said principal and capital of the said trust monies, stocks, funds, and securities, or of so much thereof as shall not become vested as hereinbefore mentioned, and the interest thereof, dividends, and annual produce, upon the trusts hereinafter declared (that is to say); as to the capital sum of one thousand pounds, three per cent. consolidated bank annuities, and the interest, dividends, and annual produce thereof, subject to the estate and interest hereby intended for the said [*gentleman*] for his life, determinable as hereinbefore is mentioned, *In trust* for such person or persons, for such estates and interests, upon and for such trusts, intents, and purposes, and in such manner as the said [*lady*], by her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

and, if there should be no issue of the marriage,

as to the sum of 1000*l.* in trust for such person as lady shall by will appoint;

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

purporting to be, or in the nature of her last will and testament, or any codicil or codicils thereto, to be signed and published in the presence of, and attested by, two or more credible witnesses, shall, notwithstanding her intended or any future coverture, give, direct, or appoint; and in default of any such gift, direction, or appointment, and in case any such should be made, then when and as the estates and interests thereby given or appointed shall respectively end and determine; *And* as to so much of the said sum of one thousand pounds, three per cent. consolidated bank annuities, as to which there shall be no such gift, direction, or appointment, *In trust* for her the said [*lady*], in case she should survive the said [*gentleman*], and her executors, administrators, and assigns, absolutely; but so as that any appointment by will or codicil, which she might have made under the aforesaid power, and during the life of the said [*gentleman*], may not be defeated or made void without some act by her; and in case she the said [*lady*] shall die in the life-time of the said [*gentleman*], then, after her decease, and subject and without prejudice to the interest of the said [*gentleman*] for his life, determinable as hereinbefore is mentioned, and to any such appointment as hereinbefore mentioned, *In trust* for such person or persons as, at the death of the said [*lady*], would have been her next of kin, and entitled to her personal estate and effects, under and by virtue of the statute made for the distribution of intestates' effects, in case she had died a spinster and intestate, his, her, or their executors and administrators, in such shares and proportions as they, if there should be more than one party entitled, would be respectively entitled thereto, according to the provisions of the said statute; *And* as to the said principal sum of five hundred pounds, three per cent. consolidated bank annuities, and the stocks, funds, and securities upon which the same should be invested, and the interest thereof, subject and without prejudice to the estate and interest of and in the same hereinbefore limited, in trust for the separate use of the said [*lady*] for her life, *In trust* for the said [*gentleman*], his executors, administrators, and assigns, for his and their own absolute use and benefit; (*Power to convert and reconvert, as ante, p.* 252): PROVIDED ALWAYS, and it is hereby agreed and declared

and in default of such appointment,

In trust for lady, (if she survive gentleman) and her executors, &c, absolutely;

and if she shall die in the life-time of gentleman,

In trust for the next of kin of the wife:

and as to the sum of 500*l.*,

In trust for gentleman, his executors, &c. absolutely.

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

between and by the parties hereto, that it shall and may be lawful for the said [*trustees*], and the survivor of them, his executors and administrators, until the trusts hereinbefore declared shall have been fully performed, or have become unnecessary, with the consent in writing of the said [*gentleman*] and [*lady*], during their joint lives, and with the consent in writing of the survivor, after the decease of either of them; and after the decease of such survivor, of the proper authority of the said [*trustees*], or the survivor of them, his executors or administrators, to call in and receive, or make sale and dispose of the said trust monies, or any of them, or any part thereof, and to reinvest the monies so called in, or arising, in the same or any other public fund, upon government or real securities in England, at interest, and so from time to time to vary the stocks in which the said trust monies should be invested, for others of the nature aforesaid, as often as they (with such consent or of such authority as hereinbefore mentioned) should think fit (subject always to the trusts hereby declared): PROVIDED ALWAYS, and it is hereby agreed, that the receipt or receipts of the said [*trustees*] should be a sufficient discharge to all and every person and persons who should make any payment or transfer to them or him of any sum or sums of money, stocks, funds, and securities whatsoever, upon the trusts or under the authority of these presents, and after such receipts should be given, such person or persons respectively should not be obliged to see to the application of the sum or sums of money so paid and transferred by him or them, or be answerable for any loss that should afterwards happen thereto, or for any misapplication or nonapplication thereof, or of any part thereof: AND it is hereby agreed and declared, that if the said [*trustees*], or either of them, or any trustees or trustee to be appointed in their stead as hereinafter mentioned, should die or be desirous to be discharged from the trusts hereby in them reposed, or should go beyond the seas for permanent residence, or become lunatic, or otherwise incapable of acting in the said trusts, at any time or times during the continuance of the same, it shall be lawful for the surviving or continuing trustee or trustees, if there be any such, or otherwise for the executors or administrators

Power to the trustees, during the lives of gentleman and lady, with their consent, and with the consent of survivor, to vary the securities.

Power to change trustees:

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

of the last surviving trustee, by any writing or writings under his and their hand and seal, attested by two witnesses, with the consent in writing of the said [*gentleman*] and [*lady*] during their joint lives, and after their or either of their decease, with the consent of the survivor of them, and after the decease of such survivor, of the authority of such surviving trustees or trustee, or such executors and administrators as hereinbefore mentioned, to nominate and appoint any person or persons to be a trustee or trustees, in the stead of the trustee or trustees so dying, or being desirous of being discharged, or becoming incapable as hereinbefore mentioned, to act in the trusts hereby reposed in such trustee or trustees as last mentioned, and so from time to time, as often as there shall be the like occasion, to nominate and appoint any person or persons to be a new trustee or new trustees, in the place of the present or any future trustee or trustees to be so appointed as hereinbefore mentioned; *And* that when and so often as any new trustee or trustees shall be appointed, all and singular the trust-monies and premises which shall then be subject to to the trusts hereby declared, shall, with all convenient speed, be paid, assigned, and made over in such manner that the same may become well vested in the new trustees or trustee, either alone or together with the surviving or continuing trustee or trustees, as the case should require, *Upon* and for the trusts and purposes hereby declared concerning the same; *And* that such new trustee or trustees, and his executors, administrators, and assigns, shall in all things act in the management and execution of the trusts hereby declared of and concerning the said trust monies, stocks, funds, and securities, and be invested with all the powers and authorities hereinbefore contained, as if he or they had been originally appointed a trustee or trustees; *And* that said [*trustees*] and such new trustees or trustee to be so appointed, shall not be accountable for any more of the trust monies arising or intended to be vested in them by virtue of these trusts than they receive, nor for any loss which may happen of the said trust monies without their wilful default, nor one for the other of them, but each for his own acts and deeds.

and that all the trust property should be made over to the new trustees.

Provision for the indemnity and reimbursement of trustees.

OF SUMS OF STOCK OF GENTLEMAN AND LADY, PROVIDING FOR THE BANKRUPTCY OF GENTLEMAN.

PROVIDED ALWAYS, and it is hereby agreed and declared, that the said [*trustees*], and such new trustees so to be appointed, shall in the first place, out of the trust monies which shall come to their hands by virtue of the trusts hereinbefore declared, deduct and reimburse themselves respectively, and allow to each other all such money as they shall pay, or be put to by reason of the trusts hereby vested in them as hereinbefore mentioned, or in the execution thereof, or any thing relating thereto. IN WITNESS, &c.

OF SUMS OF STOCK.

MARRIAGE SETTLEMENT *of two Sums of Stock, the one belonging to* LADY, *the other to* GENTLEMAN, *the Sums being vested in Trustees, upon trust to invest and vary the Securities, and stand possessed thereof Upon Trust to pay the Dividends to Gentleman for his Life, and after his Decease to Lady, and after the Decease of Survivor to the Children, in the usual manner, and with the usual Provisions;* AND *if there shall be no Children, a* MOIETY *of the Trust Monies to be in Trust for Gentleman, and the other* MOIETY *upon such Trusts as Lady shall appoint; and in Default of Appointment, to her absolutely, with Variation* FOR ONE OF THE PARTIES AGREEING *to purchase Stock.*

THIS INDENTURE, made the day of , Parties.
BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; and [*trustees*] of, &c. of the third part: WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said [*gentleman*] and [*lady*]; *And* upon the treaty for the same, Agreement for marriage, and that the

OF SUMS OF STOCK.

portion of lady, consisting of stock, should be transferred into the name of trustees;

and that sum belonging to gentleman should also be transferred:

it was agreed that the portion or fortune of the said [*lady*], which consists of four thousand pounds three pounds per centum bank annuities, standing in the books of, &c. in the name of [R. M.], as a trustee for the said [*lady*], should be transferred into the names of the said [*trustees*]; *And* it was further agreed, that (*a*) the sum of six thousand pounds, three pounds per cent. consolidated bank annuities, belonging to the said [*gentleman*], should also be transferred into the names of the said [*trustees*], and that the said [*trustees*] should stand and be possessed of the said sums of four thousand and six thousand pounds three pounds per cent. consolidated bank annuities, so to be respectively transferred into their names as aforesaid, upon the trusts and in the manner hereinafter mentioned; AND WHEREAS, in pursuance of the said agreement, the said [R. M.] hath transferred the said sum of four thousand pounds three pounds per cent. consolidated bank annuities, so standing in his name, in trust for the said [*lady*] as aforesaid, into the names of the said [*trustees*]; *And* the said [*gentleman*] hath (*b*) transferred the said sum of six thousand pounds three pounds per cent. consolidated bank annuities, and the same are now respectively standing in the names of the said [*trustees*]. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, *It* is hereby agreed and declared between and by the parties hereto, that the said [*trustees*], their executors, administrators, and assigns, shall stand and be

Transfer accordingly.

Testatum, whereby it is agreed that the trustees shall stand possessed of

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VARIATION FOR PURCHASE OF STOCK.

(*a*) If either sum is to be purchased into the names of trustees, the recital will be as follows:

"*And* it was further agreed, that the said [*gentleman*] should purchase in the same names the sum of pounds three pounds per cent. consolidated bank annuities, and that the said [*trustees*] should stand and be possessed of the said sums of pounds and pounds, so respectively to be transferred and purchased into their names as aforesaid, upon the trusts," &c.

PURCHASE OF STOCK.

(*b*) If one of the sums is to be purchased, say, "hath purchased into the names of the said trustees, the said, &c."

possessed of the said sums of four thousand pounds and six thousand pounds three pounds per cent. consolidated bank annuities, so respectively transferred (*c*) into the names of them the said [*trustees*] as aforesaid, and the interest and dividends thereof respectively, upon and for the trusts, intents, and purposes, hereinafter expressed and declared (that is to say); as to the said sum of four thousand pounds three pounds per cent. consolidated bank annuities, so transferred by the said [R. M.] as aforesaid, and the interest and dividends thereof, *In trust* for the said [*lady*], her executors, administrators, and assigns, until the said intended marriage shall be solemnized; *And* as to the said sum of six thousand pounds three pounds per cent. consolidated bank annuities, so (*d*) transferred by the said [*gentleman*] as aforesaid, in trust for the said [*gentleman*], his executors, administrators, and assigns, until the said intended marriage shall be solemnized; *And* from and immediately after the solemnization thereof, *Upon trust* that they the said [*trustees*], and the survivor of them, his executors and administrators, *Do* and shall either continue the same sums in their, &c. (*Power to change securities, see ante*, p. 506;) *And upon this further trust*, that they the said trustees or trustee for the time being, do and shall pay the interest and dividends of the said sums of four thousand pounds and six thousand pounds, and the stocks, funds, and securities thereof respectively, or permit the same to be received by the said [*gentleman*] and his assigns, during the joint lives of himself and the said [*lady*]; *And* after the decease of such one of them, the said [*gentleman*] and [*lady*], as shall first happen to die, then to, or by the survivor of them, his, or her assigns, during the then remainder of his or her life; *And* after the decease of the survivor of them the said [*gentleman*] and [*lady*], the said trust, monies, stocks, funds, and securities, and the interest and dividends thereof, shall be in trust for all and every, or such one or more exclusively of the other or others of such children or child of the said [*gentleman*] by the said

OF SUMS OF STOCK.

the lady's sum

In trust for lady until the marriage;

and as to the gentleman's sum, In trust for him until marriage;

and after marriage, as to both sums, upon trust to vary the securities, and pay dividends thereof to gentleman during his life,

and after his decease to lady,

and after decease of survivor, In trust for all the children, as parent shall appoint;

(*c*) "and purchased."

(*d*) "so purchased by the said [*gentleman*]," &c.

PURCHASE OF STOCK.

PURCHASE OF STOCK

OF SUMS OF STOCK.

[*lady*], with such provisions for their respective maintenance, &c. (*as parents jointly, or the survivors, shall appoint, see ante*, p. 507, 508); *And* in default of such last mentioned appointment, and so far as any such, if incomplete, shall not extend, then *In trust* for all and every the children and child of the said [*gentleman*] by the said [*lady*], who being a son or sons, shall attain the age of twenty-one, or being a daughter or daughters shall attain that age, or marry under that age; *And* to be divided between or amongst the said children, if more than one, in equal shares as tenants in common; *And* if there be but one such child, then the whole to be in trust for that child; *And* if no child shall become entitled to the said trust monies, stocks, funds, and securities, under the trusts aforesaid, *Then* after the decease of the said [*lady*], and such failure of issue as aforesaid, one moiety or equal half part of the said trust monies, stocks, funds and securities, and the interest and dividends thereof, or of so much thereof respectively, as shall remain undisposed of after answering the purposes hereinbefore and hereinafter mentioned, shall be in trust for the said [*gentleman*], his executors, administrators, and assigns, for his and their absolute use and benefit; *And* if no child shall become entitled as aforesaid, *Then* after the decease of the said [*gentleman*], the other moiety or equal half part of the said trust monies, stocks, funds, and securities, and the interest and dividends thereof, or of so much thereof as shall remain undisposed of after answering the purposes hereinbefore and hereinafter mentioned, shall remain and be upon and for such trusts, intents, and purposes, as the said [*lady*], by any deed, with or without power of revocation and new appointment, or by her last will in writing, or any codicil in writing, or any writing in the nature of a will, shall from time to time, notwithstanding her coverture, appoint; and in default of, and until such appointment, and so far as any such appointment shall not extend, *In trust* for the said [*lady*], her executors, administrators and assigns, for her and their absolute use and benefit. (*Hotchpot, maintenance, and accumulation clause, as ante*, p. 508. *Advancement clause, as ante*, p. 509). PROVIDED ALSO, that the provision hereby made for the said [*lady*] shall be, and the said [*lady*]

and in default of appointment, equally;

and if no child shall become entitled, one moiety of the trust monies shall be in trust for gentleman absolutely, and the other moiety shall be in trust for such purposes as lady shall by deed or will appoint;

and in default of appointment, to her absolutely.

Proviso that the provision made for lady shall be in bar of dower.

OF SUMS OF STOCK.

doth hereby accept the same, in satisfaction and bar of her dower, and any interest whatsoever to which she would be entitled in or out of any hereditaments of which, during the said intended coverture, the said [*gentleman*] should be seised of or for any estate of inheritance. (*Trustees' receipts sufficient discharges. Clauses for changing trustees, and for their indemnity and reimbursement, see ante*, p. 511, 512). IN WITNESS, &c.

OF ESTATE FOR LIFE IN REMAINDER, RESIDUARY PERSONAL ESTATE, AND EXECUTORY INTERESTS AND EXPECTANCIES.

MARRIAGE SETTLEMENT OF A LIFE ETSATE IN REMAINDER, *and* RESIDUARY *Personal Estate of Lady, under Will of her former Husband; And Executory Interests, and Expectancies under the Will of her Uncle; whereby the* LIFE ESTATE *in Remainder is conveyed to the Use of Lady until the Marriage, and after the Marriage, to Trustees, Upon Trust to pay Rents to separate Use of Lady; and whereby the Personalty and Executory Interests are vested in the same Trustees, Upon Trust to receive the same, and when received to invest and vary; and as to Part of the Trust Monies, Upon Trusts for the separate Use of Lady; and after her Decease, to the Children of the Marriage, as she shall appoint, and in Default of Appointment, to all equally; and in Default of Issue, Upon Trusts for the Benefit of Lady.* PROVISIONS *for Hotchpot, for the Maintenance and Advancement of the Children, and Accumulation of the Residue of their Shares; and as to the other Part, Upon Trust to pay the Interest thereof to Gentleman for his Life, and to Lady for her Life, if she survives him, and then as to the Principal Sum, in Trust for the Benefit of the Children in the same manner as be-*

OF ESTATE FOR LIFE IN REMAINDER, RESIDUARY PERSONAL ESTATE, AND EXECUTORY INTERESTS AND EXPECTANCIES.

fore declared respecting the firstly settled Monies: Proviso that Double Advancement may be made; and if no Children, upon Special Trusts; POWER *to convert and reconvert as to the firstly and secondly settled Monies.* COVENANT (*a*) *by Gentleman and Lady, that they will* SETTLE *any Real Estate which may be given or come to Lady during the Marriage to the use of Herself and the Children of the Marriage.* COVENANT *by Gentleman and Lady that they will vest in Trustees any Personal Estate which may be given or come to Lady during the Marriage, Upon trusts for the benefit of Herself and the Children of the Marriage.* USUAL CLAUSES.

THIS INDENTURE, made the day of ,

Parties. BETWEEN [*lady*] of, &c. of the first part; [*gentleman*]

COVENANTS TO SETTLE PROPERTY.

(*a*) This opportunity will be taken to consider the important subject of covenants to settle property.

Covenants to lay out money in the purchase of lands.

When a person enters into a covenant on marriage, to lay out money in the purchase of lands, it will be strictly enforced against his heir, if he has assets by descent, *Roundel* v. *Breary*, 2 Vern. 482; *Deacon* v. *Smith*, 3 Atk. 330; his personal representatives, if they have assets, *Lechmere* v. *Earl of Carlisle*, 3 P. Wms. 211, and Cas. Temp. Talb. 92; *Lancey* v. *Fairchild*, 2 Vern. 101; *Benson* v. *Benson*, 1 P. Wms. 130; and since the 3 Will. and Mary, c. 14, it would seem, against his devisee. When the heir and the personal representatives both have assets, the performance of the covenant will always be enforced against the latter. *Lancey* v. *Fairchild*, 2 Vern. 101; *Disher* v. *Disher*, 1 P. W. 204; *Edwards* v. *Countess of Warwick*, 2 P. W. 171; *Chaplin* v. *Horner*, 1 P. W. 483; *contra*, *Chichester* v. *Bickerstaff*, 1 Vern. 295; *Pulteney* v. *Lord Darlington*, 1 B. C. C. 223, unless the covenantor disposes of the money by will, or does some act to make it resume its character of personalty. And any person coming within the marriage consideration, may enforce the performance of such a covenant. Thus the issue of the marriage, *Benson* v. *Benson*, 1 P. Wms. 130; *Dodd* v. *Dodd*, Ambl. 274; *Sowden* v. *Sowden*, 1 B. C. C. 382; or any person claiming through any person within the marriage consideration; as if in a limitation of the lady's property, there be a use limited to the husband, the husband's heir at law will be entitled to a performance of the covenant. *Edwards* v. *Countess of Warwick*, 2 P.

of, &c. of the second part; and [*trustees*] of, &c. of the third part: WHEREAS [Y. Y.] duly signed and published his last will and testament in writing bearing date the day of , and thereby gave and bequeathed unto his wife, the said [*lady*], her executors, administrators, and assigns, all his furniture, &c. and a moiety of his residuary estate, and the other moiety to her daughter [Cath. Y.] *And* the said testator appointed [A. B.] executor of his said will; AND WHEREAS the said [Y. Y.] in such manner as the law requires for rendering valid devises of freehold estate, duly signed and published a codicil to his said will, which said codicil bears date the day of , and thereby gave and devised all his mes-

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Recital of will of Y. Y., bequeathing residue to lady.

Codicil, whereby real estate is devised to lady for her life.

Wms. 171; *Kettleby* v. *Attwood*, 1 Vern. 298; *Knight* v. *Atkins*, 2 Vern. 20; *Lingen* v. *Sawrey*, 1 P. Wms. 172. In one case, *Vernon* v. *Vernon*, 2 P. Wms. 594, a volunteer enforced the performance of a covenant of this nature; and if the money is in the hands of the trustee, it is clear that a volunteer may compel the trustee to lay it out in lands. *Ellison* v. *Ellison*, 5 Ves. 656.

I may now shortly advert to what will be deemed a satisfaction of such a covenant. And it may be observed that a law at covenant of this nature can only be satisfied by a strict performance of it: the purchase and settlement of lands according to it.

What will satisfy such a covenant.

Where a covenant to convey and settle lands is entered into, if the covenantor afterwards purchase lands, they will be bound in equity by the covenant, although not settled; and the covenantor's heir at law will be compelled to convey them to the person entitled under the covenant. *Wilcocks* v. *Wilcocks*, 2 Vern. 558; *Deacon* v. *Smith*, 3 Atk. 323. 3 B. C. C. 490. And if the lands are covenanted to be of a certain value, and those purchased are of inferior value, they will still be held to be bound, and be taken in part satisfaction of the covenant. *Sowden* v. *Sowden*, 3 P. Wms. 228; *Lechmere* v. *Earl of Carlisle*, 3 P. Wms. 211; *Whorwood* v. *Whorwood*, 1 Ves. 540; *Garthshore* v. *Chalie*, 10 Ves. 9. And though the purchase was to be made with the assent of some other person, although such assent was not obtained, the lands will still be bound. *Lechmere* v. *Earl of Carlisle*, *ubi sup.* But where the covenant is to purchase and settle lands in fee simple in possession, or freehold lands, a purchase of an estate in reversion, or leaseholds, *Lechmere* v. *Earl of Carlisle*, *ubi sup.*, or lands in Borough English, *Penhill* v. *Hallett* Amb. 106,; or copyholds, *Wilkes* v. *Wilkes*, 2 Eq. Ca. Abr. 35; will not satisfy the covenant, for they

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Death of Y. Y., and probate of his will.

suages, tenements, hereditaments, and real estate situate at (subject to the life estate of [W. L.] therein or of any part thereof) *To the use* of his said wife, the said [*lady*] and her assigns, for the term of her life, without impeachment of waste, and after her decease to the uses in the said codicil mentioned; AND WHEREAS the said [Y. Y.] departed this life on or about the day of , without having altered or revoked his said will further than the same was altered by his said codicil; and on or about the day of the same will and codicil were duly proved by the said [A. B.] in the prerogative court of the Archbishop of Canterbury; AND WHEREAS

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will not answer the intent of the settlement. *Lewes* v. *Hill*, 1 Ves. sen. 274.

Covenant to settle on certain events.

Where the making of the settlement is to depend upon some particular event, if the event does not happen, the execution of the settlement cannot be enforced. Thus if a person covenants to settle property on surviving another and succeeding to an estate, or on the performance of a certain condition, and these events do not happen, the execution of the settlement cannot be enforced. *Powell* v. *Pillet*, Gilb. Eq. Cas. 188; *Pyke* v. *Pyke*, 1 Ves. sen. 876; *Cheke* v. *Lisle*, Finch, 99. So also where A. under a settlement is tenant in tail in remainder expectant upon failure of male issue of her only brother, covenants that if by virtue of *the limitations contained in that settlement*, she shall become entitled to a certain estate, or part thereof, she will settle it: and her brother afterwards suffers a recovery, and dies intestate without issue, and one fourth part descends to her in fee, her covenant will not affect it. *Tayleur* v. *Dickenson*, 1 Russ. 521. But where the event happens, or the condition is performed, the execution of the settlement may be enforced. *Rhodes* v. *Thornton*, Finch, 150; *Otway* v. *Braithwaite*, Finch, 405. And where the condition is not to be performed by the party claiming the assistance of the court, but by some other person, then, although the condition be not complied with, yet equity will enforce a performance of the articles, *Hollis* v. *Carr*, Cas. Temp. Finch, 261; and see *Pyke* v. *Pyke*, 1 Ves. sen. 376: So where the agreement is to make a settlement within a given time, the not having been called upon to make it within the time, will not be a valid reason for not performing it after the time has expired. *Trevor* v. *Trevor*, 1 P. Wms. 622.

So if the covenant is to purchase lands in a particular place, if land cannot be there purchased, this does not discharge the covenantor, but other lands must be purchased. *Broom* v. *Monk*, 10 Ves. 618.

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the residuary personal estate and effects of the said [Y.Y.] to which the said [*lady*] and the said Catherine Y. (*the daughter of* [*Y. Y.*]) are, under or by virtue of the recited will of the said [Y. Y.] entitled in the manner hereinbefore mentioned, consists of the sum of one thousand pounds of lawful money of Great Britain and Ireland, now in the hands of the said [A. B.], and of the sum of two thousand pounds three per cent. bank annuities, which at the present market price of that stock, is worth about one thousand eight hundred and eighty pounds, of like lawful money; AND WHEREAS, [L. L.] late of &c. deceased, duly made and published his last will and testament in writing, bearing

That the residuary property consists of 1000*l.* and 2000*l.* stock, worth 1880*l.*

Will of L. L., bequeathing personal estate to lady.

Money covenanted to be laid out in lands will be taken as lands.

It is a well known rule in courts of equity, that money covenanted to be laid out in land will be considered as land, and other parties, who would have been entitled to an absolute interest in fee or in tail, in the lands, in case they had been purchased, have been permitted, on presenting a petition, to take the money *as money*. *Benson* v. *Benson*, 1 P. Wms. 129; *Seely* v. *Jago*, ib. 389; *Trafford* v. *Boshen*, 3 Atk. 447; 39 and 40 Geo. III. c. 56. and 7 Geo. IV. c. 45. And it will be no objection to this rule, that the parties are under coverture. *Oldham* v. *Hughes*, 2 Atk. 452; *Binford* v. *Bawden*, 1 Ves. jun. 512; but if they are infants, the fund must remain in court until they come of age, *Seely* v. *Jago*, 1 P. Wms. 389. See further as to this, *ante*, p. 78. and addenda.

Covenant to settle property to which the testator is or may at any time hereafter be entitled.

We are now to consider a point connected with the subject which is discussed in this note, *viz.*: covenants to settle the property of which the covenantor is entitled, or to which he may at any future time be entitled; a subject in which the authorities are a little confused.

And first, a covenant to settle all the property, real and personal, of or to which the covenantor is seised or entitled at the time of the covenant, is certainly valid and binding on all such property. It is also clear that a covenant to settle all the real estate of which the covenantor, or of or to which he may at any time afterwards, or during a particular coverture, become seised or entitled, will be enforced, *Prebble* v. *Boghurst*, 1 Swans. 309; as will a covenant to leave half, or any smaller part, of all the real and personal estate of a person, whether present or future, *Webster* v. *Mitford*, 1 Swanst. 449 n. and 435 n.; *Gregor* v. *Kemp*, 3 Swanst. 404 n.; and if a covenant is entered into to settle a part of all the real and personal property of or to which the testator may be seised or entitled at the time of his death, a fraudulent disposition to defeat this covenant, as an alienation three

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date, &c. and thereby (*gave his residuary personal estate to his wife for life, then to his brother and his children, (if any), then to his two nieces the said lady and* [*E. K.*] *spinster, daughters of his late sister* [*M. K.*], *to be equally divided between them, and if either should depart this life without issue, then the part of her so dying, to the survivor, but if with issue, to such issue; Appointment of executors,* as ante, *p.* 585.) AND WHEREAS the said [L. L.] afterwards departed this life without having revoked or altered his said will, and on the day of , his said will was duly proved by the executors thereof in the prerogative court of the Archbishop of Canterbury ; AND WHEREAS, the said

Death of L. L.

Death of his wife.

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days before the death of the testator, will be rescinded, *Gregor* v. *Kemp*, 3 Swans. 404 n.; *Jones* v. *Martin*, 3 Anst. 882, 5 Ves. 266 n. S. C.; and see *Fortescue* v. *Hennah*, 19 Ves. 72.

A covenant to settle all the lands of which a man shall become *seised*, does not include leaseholds, but only freeholds and copyholds, *Prebble* v. *Boghurst*, 2 Swanst. 580; and the reporter's note, 581; but see 1 Swans. 319.

A covenant by a husband to settle *all* the personal estate of which he is possessed at the time of the articles, is clearly binding on all such personal estate; and if it afterwards be laid out in lands, without reference to the covenant, the money so laid out may be followed and demanded of the heir or devisee of the covenantor, for they will be charged to the amount of the purchase-money, *Lewis* v. *Madocks*, 8 Ves. 150; and in one case, the lands themselves were ordered to be conveyed to the *cestui que trusts* under the articles, *Randall* v. *Willis*, 5 Ves. 262. So also a covenant to settle all the personal estate that the covenantor should at any time be possessed of, will bind all the *capital* of which he becomes possessed, although it will not affect the income or annual produce, unless it be invested and laid up, *Lewis* v. *Madocks*, *ubi sup.* and 17 Ves. 46. So a covenant by a husband, to *leave* the whole of the personal property of or to which he should be possessed or entitled at his death, will attach upon and bind all his personal estate, at the time of his death, after the payment of his debts and funeral expenses, although such a covenant leaves the free use of his property open to the covenantor during his life, *Garthshore* v. *Chalie*, 10 Ves. 20, unless as has before been mentioned, he disposes of it fraudulently, with a view to defeat the covenant. Thus also it has been held that a covenant of this nature cannot be defeated by any incomplete act in his life time, or by his will, or any instrument testamentary in its effect, *Jones* v.

[*wife of L. L.*] hath since departed this life; AND WHEREAS the said [*brother*] hath no issue, and is far advanced in years; AND WHEREAS the said [E. K.] is still living and unmarried; AND WHEREAS the residuary personal estate of the said [L. L.] to which the said [*lady*] and [E. K.] are under the said recited will entitled in the manner hereinbefore mentioned, subject to the life interest of the said [*brother*], and the bequest of the same in favour of his children, after payment of the said [L. L.'s] debts, legacies, funeral and testamentary expenses, does not exceed in value the sum of eight thousand pounds of lawful money of Great Britain and Ireland; AND WHEREAS a marriage has been agreed upon,

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That present possessor of property is without issue.

That residuary personal estate of L.L. amounts to 8000*l.*

Agreement for marriage, and

Martin, 3 Anst. 882. 6 B. P. C. Toml. edit. 437; 8 B. P. C. 242; 5 Ves. 266 n.; *Hawkes* v. *Jones*, 5 B. P. C. 136. *Fortescue* v. *Hennah*, 19 Ves. 67; *Cochran* v. *Graham*, 19 Ves. 62, stated *ante*, p. 284; *Bowers* v. *Fairbeard*, 2 Vern. 202; *Turner* v. *Jennings*, 2 Vern. 612, 685; *Bradish* v. *Bradish*, 2 B. and B. 479.

Thus far, there appears little difficulty in the consideration of this subject; but some doubt affects the question, whether a covenant to settle *all the real and personal estate* of, or to which the covenantor was seised or entitled at the time of the covenant, or might at any time afterwards become seised or entitled, would be supported and enforced in equity. On the first impression, it would seem that the cases above cited all tend to establish the affirmative of this proposition, and although none of them decide the precise point, yet they all afford grounds and principles for the determination that such a covenant would be enforced.

A covenant of this nature came before the court, in the case of *Needham* v. *Kirkman*, 3 B. & A. 531, the circumstances of which arose in a case sent to the K. B. by the Vice-Chancellor, and were as follows: By indentures of lease and release of the 1st and 2d days of October, 1802, the release made between John Needham of the first part, John Burton of the 2d part, Anne Burton, spinster, daughter of the said John Burton, of the third part, and Charles Dodsworth and James Butler, of the fourth part; (being the settlement made previously to, and in contemplation of, a marriage between the said John Needham and Anne Burton), the said John Needham released and confirmed unto the said C. Dodsworth and J. Butler, and to their heirs and assigns, several lands and hereditaments in Heather, in the county of Leicester, in the said indentures described: To hold the same unto the said C. Dodsworth and J. Butler, their heirs and assigns, to the use of the said J. Needham and his heirs, until the said intended mar-

Needham and *Kirkman*.

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agreement that the property of gentleman should be settled for the benefit of gentleman, lady, and issue, and that all the property of the lady (except plate,

and is intended to be shortly had and solemnized between the said [*gentleman*] and [*lady*], and upon the treaty for the same, it was agreed that the property of the said [*gentleman*], consisting of a freehold house and hereditaments, situate in &c., and the several sums of two thousand eight hundred pounds, and four thousand pounds, three per cent. consolidated bank annuities, should be settled for the benefit of the said [*gentleman*] and [*lady*], his intended wife, and their issue; *And* upon the treaty for the said intended marriage it was agreed, that the property to which the said [*lady*] was, or should, or might, become entitled under the recited wills of the said [Y. Y.] and [L. L.] (except the plate,

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riage; and after the solemnization thereof, to the use of the said J. Needham and his assigns, for his natural life, with remainder to the use of the said C. Dodsworth and J. Butler, and their heirs, during the life of the said J. Needham, in trust to preserve the contingent remainders; and after his decease, in trust, and to the intent that the said Anne Burton, if she should survive the said J. Needham, might, out of the said hereditaments, take, during the term of her natural life, for her jointure, and in bar of dower, an annual rent of 60*l.*, to be paid half-yearly; and as to, for, and concerning the said hereditaments, after the decease of the said J. Needham, subject to the said annual rent of 60*l.*, and to the powers and remedies thereby given for the recovery thereof, to the use of all and every the child and children of the body of the said J. Needham, both by his late wife Hester, therein mentioned to be deceased, and by the said Anne Burton, his intended wife, and of the respective heirs and assigns for ever of all and every such child and children, to be equally divided amongst them, if more than one, share and share alike, to take as tenants in common, and not as joint tenants; and in default of all such issue, then to the use of the said J. Needham, his heirs and assigns for ever: And the said J. Needham did in consideration of the said intended marriage, for himself, his heirs, executors, and administrators, covenant with the said C. Dodsworth and J. Butler, their heirs, executors, and administrators, that in case the said intended marriage should take effect, and there should be any issue of such marriage, then, and in such case, he the said J. Needham should and *would by his last will and testament, or otherwise, give, devise, and bequeath all other his real estates, and also his personal estate and effects, whatsoever and wheresoever*, unto and amongst all and every the children of his body, whether born of the body of his late wife Hester, or to be born of the body of the said

linen, china, household goods and furniture, bequeathed to her by the said will of the said [Y. Y.] as aforesaid) and also all the real and personal estate and effects to which at any time during her life, the said [*lady*], or the said [*gentleman*] and [*lady*] in her right, should or might be entitled, should be settled in the manner hereinafter mentioned: AND WHEREAS in pursuance and part performance of the said agreement, by indentures of lease and release already prepared and engrossed, the lease bearing or intending to bear date the day next before the day of the date of the release, and the release bearing or intending to bear even date with these presents; *And* by another indenture in-

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&c.) should also be settled as hereinafter is mentioned.

Indentures, whereby gentleman's property is settled as hereinafter agreed upon.

Anne Burton, his said intended wife, and their heirs, executors, and administrators respectively, according to the nature and quality of such his estates, share and share alike, as tenants in common, and not as joint tenants, except such part thereof as he might thereafter in his life time give, devise, or bequeath unto, or to the use of the said Anne Burton. The marriage between the said John Needham and Anne Burton was soon after solemnized; and the said Anne died; and there were several children now living, the issue of such marriage. There were also born to the said John Needham, of the body of his first wife Hester, several children, who were living. At the time of making the above mentioned indentures of the 1st and 2d days of October, 1802, the said J. Needham, who was still living, was seised in fee simple of certain lands, situate in the parish of Church Griesley, in the county of Derby, and the tithes thereof arising and growing; but since the date and execution of the indentures, the said J. Needham purchased other lands, and the tithes thereof, situate in the said parish of Church Griesley, and which were conveyed to the said J. Needham in fee simple. And the said John Needham, in December, 1817, sold, and duly conveyed the whole of the said lands in Church Griesley as aforesaid, with the tithes thereof, to John Kirkman, the purchaser thereof, his heirs and assigns, for his and their own use and benefit. The question for the opinion of the court was, whether, in case the said J. Needham should depart this life leaving such children as aforesaid, without having procured a re-conveyance of the lands and tithes so sold and conveyed to John Kirkman, so that he should be unable by his last will or otherwise, to give, devise, or bequeath the same to and amongst his children, he would be guilty of a breach of the covenant entered into by him in his said settlement, to give, devise, and bequeath by his last will or otherwise, all other his real estate, in the manner therein mentioned.

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tending to bear even date with these presents, the afore said property of the said [*gentleman*], hath been or is intended to be settled in the manner hereinbefore agreed upon: NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said intended marriage, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to her the said [*lady*] paid, at or immediately before the sealing and delivery of these presents, (the receipt, &c.) SHE the said [*lady*], with the privity and approbation of the said [*gentleman*], her said intended husband, (testified by his being a party to and sealing and

First witnessing part, whereby lady conveys parcels,

The case was argued by *Sugden* for the plaintiff. The question is, on the construction of this covenant, whether it applies to the real estates only, of which the said John Needham should die seised, or to those of which he was seised at the time of making the covenant, and to that also which he might subsequently acquire. The covenant is, that he would by his last will, devise all other his real estates, and also all his personal estates and effects whatsoever, amongst the children of both marriages. Now a covenant to settle all his personal estates clearly operates only on that of which a man dies possessed. *Lewis* v. *Madocks*, 17 Ves. 48. There the Lord Chancellor determined, that all expenditure, &c. not fraudulent on the part of the husband, was authorized under such a covenant. Here the real and personal estate are both included in one covenant; and it would be strange if the same construction did not prevail as to both. The form of the question shews that Needham has a power to sell, for it is whether he will be guilty of a breach of covenant, unless he procures a *reconveyance*. He has, therefore a power of alienation. The only object of the covenant was to place the children of both marriages on an equality; and that will be done, whether this be the situation of real or of personal property.

Preston contra.—It does not follow, that because the personal estate only of which Needham would die possessed would be bound by this covenant, therefore the real estate must follow the same rule; for they differ in many important particulars. As, for instance, in wills the real estate is considered as specific property, and the personal estate is not. In the case of *Lewis* v. *Madocks*, 8 Ves. 150, the words were, "all and singular the goods, &c. personal estate or effects that he should, at any time during the joint lives of him and of his said intended wife, be possessed of;" and the Lord Chancellor decided, that the personalty laid out in the purchase of a real estate, was to be con-

delivering these presents, *Hath* granted, bargained, sold, and confirmed, and by these presents *Doth* grant, bargain, sell, and confirm unto the said [*trustees*], in their, &c. (*reference to lease for a year*), and their heirs, ALL THAT, &c. (*parcels*), (all which hereditaments and premises hereinbefore described now stand limited to the use of the said [W. L.] and his assigns, during his life, and after his decease, to the several uses mentioned in the said codicil to the will of the said [Y. Y.]), *And* all other the lands and hereditaments, which by the said recited codicil were devised to the use of the said [*lady*] for her life, subject to the life estate and interest of the said [W. L.] therein, as hereinbefore is men-

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which premises stand limited to the uses declared by the codicil.

Sweeping clause.

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sidered as a lien on the estate in the hands of the heir. Here how is it possible to get over the words "all other my real estate?" The settlor had previously bound some estates by settlement; and it is stated that he was also seised of others. Those estates, therefore, clearly must be the estates meant, when he speaks of all other his real estates. The proper construction of the covenant will, therefore, be to hold it applicable to all the real estates of which the settlor was seised at the date of the instrument, and to the personal estate of which he should be possessed at the time of his death, with a lien on the estates he might subsequently acquire, for the amount of the personal estate laid out in the purchase of them by him.

Sugden in reply. It is admitted, that over the personal estate the party has full power for the purposes of expenditure. The party can only distribute according to the covenant, share and share alike amongst the children. The settlement is perfectly regular as to a part of the estates of which Needham was seised; and as to the rest, it is plain the object was to retain the dominion over them; or, otherwise there is no reason why they should not be included. Besides, the covenant is in itself contingent; for it was to have no effect unless there was issue of the second marriage. It could not, therefore, be a lien on the other estates. It cannot be disputed that Needham may sell the estates, for he has his whole life to perform the covenant. It would therefore be absurd to put such a construction on it, as would compel him to repurchase: that, therefore, shews that the other construction is bad: and besides, if that were adopted, the real estates subsequently acquired would not be bound, even though he died seised of them, which would be a detriment to the children, whereas the construction contended for by the plaintiff, would give the children the advantage of having all the estates, both real and personal, belonging to Needham at his death, bound by the covenant.

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tioned, with their and every of their appurtenances; *And* all the estate, &c. To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, (subject and without prejudice to the life estate and interest of the said [W. L.] therein,) unto the said [*trustees*] and their heirs, to the uses, and upon the trusts hereinafter expressed and declared of and concerning the same, (that is to say); *To the use* of the said [*lady*] and her assigns, until the solemnization of the said intended marriage; *And* from and immediately after the solemnization thereof, *To the use* of the said [*trustees*], their heirs and

Habendum, subject to the life-estate of W. L., To the use of lady until the marriage; and after the marriage, To the use of

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The following certificate was afterwards sent: — This case has been argued before us; and we are of opinion, that in the event mentioned in the question proposed to us, John Needham will not be guilty of the breach of covenant therein mentioned.

C. ABBOTT.
J. BAYLEY.
G. S. HOLROYD.
W. D. BEST.

Now it will be seen, that no question was raised in this place, as to the validity of such a covenant. All that was decided was, that the covenant did not restrain the covenantor from a *bona fide* disposition of his property in his life time, a principle strictly in conformity with the cases above cited. But some doubt has been thrown upon this, by a note of a case lately published by Mr. Swanston, and extracted from the MSS. of Lord Nottingham, *Coke* v. *Bishop*, 3 Swans. p. 401, in which the facts are, however, very imperfectly stated. As mentioned in the note, they are as follow:

Coke v. *Bishop.*

"The defendant having long since been arrested for one thousand pounds, at the suit of J. S., the plaintiff was so kind to him as to lay down the money for him; whereupon in requital of his kindness, the defendant entered into articles with the plaintiff, to settle upon him all his real and personal estate, which he had or should have, except three thousand pounds: Upon these articles a suit was commenced in Chancery in the year 1664, and a decree made for the defendant to settle all he then had, which was performed; since that an attempt was made before me (says Lord Nottingham) to have a new decree against the defendant, to settle new acquisitions made by him; but I did not think a court of conscience obliged to execute such a strange agreement any further than it had been already carried, since it tended to

assigns, during the joint lives of them the said [*gentleman*] and [*lady*], without impeachment of waste, *Upon trust* that the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, do and shall, during the joint lives of the said [*gentleman*] and [*lady*], pay, apply, and dispose of the rents, issues, and profits of the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, to such person or persons only, for such intents and purposes only, as the said [*lady*], notwithstanding her said intended coverture, and as if she were sole and unmarried, shall from time to time, by any writing or writ-

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trustees during the joint lives of gentleman and lady, to apply the rents to separate use of lady;

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the discouragement of all honest industry: so the suit failed. Now this bill was exhibited in aid of the former decree in 1664; for it did not demand any estate accrued since, but to have a further conveyance of that estate, which was then in being, but undiscovered, and is now proved; and insisted upon some old forfeited mortgages then unknown, and for this the plaintiff prevailed; but because forfeited mortgages in fee simple are, when redeemed, part of the personal estate, *ergo*, the decree was with a proviso, that if the defendant's personal estate was not worth three thousand pounds at the time of his death, according to the exception of the articles, then these forfeited mortgages, now to be conveyed, should be subject to make it up."

Conclusion from the cases.

It would seem that a covenant entered into upon marriage, is not within the mischief contemplated by Lord Nottingham, as nothing can be more natural than that all the property acquired by a man should be settled upon his wife and the issue of the marriage. A covenant of this nature entered into upon the marriage of the covenantor, would not 'tend to the discouragement of industry,' and does not therefore come within the principle on which this case was decided.

As it will be seen that the covenant in this case was not entered into on a marriage, and perhaps was considered by the court as having been wrung out by the necessities of the debtor; it may perhaps be assumed, that if the validity of such a covenant came before the court, they would not give a case of this nature so much weight as to allow it to interfere with the principles established by all the former decisions on the subject; and that if entered into upon marriage, they would decide in favour of such a covenant. A covenant very nearly of this nature has lately been under the consideration of several gentlemen in the profession, and it may be useful in this place to allude to it.

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ings, signed by her own hand, direct and appoint; *And* in default of such direction or appointment, into the proper hands of her the said [*lady*], for her sole and separate use and benefit, exclusively of the said [*gentleman*], her said intended husband, and without being subject to his controul, debts, interference, or engagements whatsoever; *And* the receipt or receipts of such [*lady*], or of such person or persons as she should from time to time direct and appoint to receive the said rents, issues, and profits, or any part thereof, shall, notwithstanding her coverture, be an effectual discharge or effectual discharges for the money therein mentioned and acknowledged to be received, and after the de-

the receipts of lady to be sufficient discharges;

and after de-

By indentures, dated, 1st and 2d August, 1768, and made between Thomas Blunt the younger of the first part, C. Hoskyns and and Walter Rogers of the second part, and Mary Hoskyns, daughter of C. Hoskyns, of the third part; Mary Hoskyns (in consideration of a marriage then intended, and afterwards solemnized, between Thomas Blunt the younger and herself) conveyed a certain estate, situate at Treradow in the county of Hereford, unto W. Rogers and C. Hoskyns and their heirs, to certain uses in favour of herself, her intended husband, and the children of the marriage. And by the indenture of release, after reciting that Thomas Blunt had no power to make any jointure or settlement on Mary Hoskyns and the issue of the marriage, for the considerations aforesaid, he, for himself, his heirs, executors, and administrators, covenanted with C. Hoskyns and W. Rogers, their heirs, executors, and administrators, that if the intended marriage should take effect, he would, by his last will or otherwise, in his life-time, in due form of law, well and effectually give and bequeath, settle, convey, and assure all such messuages, lands, tenements, and hereditaments, whether freehold, leasehold, copyhold, or customary, goods, chattels, credits, and personal estate, of whatever nature or kind, as he should, at or immediately before the time of his death, be seised, possessed of, or entitled to, either at law or in equity (subject to the payment of his debts), so that such messuages, &c. might be held, possessed, and enjoyed by Mary Hoskyns for her life, and after the decease of the survivor of them the said Thomas Blunt and Mary Hoskyns his wife, then by all and every the child and children, issue of the body of the said Mary Hoskyns by the said Thomas Blunt lawfully to be begotten, and his, her, and their several and respective heirs, executors, and administrators, according to the respective natures of such estates, in equal shares and proportions, as

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cease of gentleman, to lady for her life.

Second witnessing part, whereby lady assigns and gentleman confirms,

cease of the said [*gentleman*], the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, shall remain and be, *To the use* of the said [*lady*] and her assigns for the then remainder of her life, without impeachment of waste: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said intended marriage, and of the settlement made, or intended to be made, of the property of the said [*gentleman*], by the several indentures hereinbefore mentioned; *And* also in consideration of the sum of ten shillings of like lawful money by the said [*trustees*] to each

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tenants in common, and if but one such child, to that one, and his or her heirs, executors, or administrators, and in default of such issue, remainder over.

Thomas Blunt had three daughters married, A., who had issue three sons, and who died in the life-time of her father and mother, B., who died in the life-time of her parents, a spinster, and C., who survived her parents, but did not marry.

The settlor, Thomas Blunt, subsequently made a will, in which he disposed of his property without noticing his covenant, apportioning it in a different manner from that in which it would go, if bound by the covenant. He then died seised and possessed of very considerable property, leaving his wife, his daughter C., and his three grandsons by his eldest daughter, him surviving. The doubt was, whether the covenant was not binding on all the property of the settlor, and whether the will was not to be treated as a nullity. The opinions of six gentlemen in the profession were taken as to this and other points arising out of the settlement, and they all concurred in thinking this a valid covenant, and one which could be enforced in equity. An extract from the opinion of one of the gentlemen consulted is here subjoined.

"The covenant appears to me good and binding, and may be enforced in equity. I doubt very much what is the true effect of this covenant, for two of the daughters died before the testator; and if any part of his real estate was acquired by him after their deaths, it could not be settled by him on his deceased daughters. Upon the best opinion, however, I can form, subject to the estate for life of his wife, in his real and personal estate, the real estate of which the testator died seised, went, one third to C., one third to the eldest son and heir of A., and the other third, which would have been B.'s, to C. and the eldest son of A. as her heir at law; and that the personalty went, one third

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of them the said [*lady*] and [*gentleman*] paid at or immediately before the sealing and delivery of these presents; (the receipt, &c.) SHE the said [*lady*], with the privity, consent, and approbation of the said [*gentleman*], so testified as aforesaid, *Hath* granted, bargained, sold, and assigned; *And* by these presents, &c.; *And* the said [*gentleman*] *Hath* ratified and confirmed, *And* by these presents, &c. unto the said [*trustees*], their executors, administrators, and assigns, ALL the said residuary (*b*) personal estate and effects of the said [Y. Y.] and [L. L.] respectively deceased, after payment of their respective debts, legacies, funeral, and testamentary expenses, and the stocks, funds,

all the residuary personal estate of the two testators.

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to C., one third to the executors or administrators of A. as part of her personal estate, but that if B. made no will, her one third went to her father as her administrator, and then will go to his personal estate under his will, or the covenant attaches; but as he was entitled to it in his life-time, though not in possession, I think the covenant attached to this, as B.'s share always reverts to him; this one third ultimately vests in C. and the executors and administrators of A., in equal shares; but I recollect no case like this, on this point.

J. B.—Oct. 16, 1829."

Covenants to pay a sum of money.

Covenants by husband, for the payment of a certain sum of money to his wife and children, must be worded with the greatest care, and every event must be provided for, or the sum will not be directed to be paid.

Thus where a person, by marriage articles, covenanted that his executors should, within three months after his decease, pay to his wife, in case she survived him, a certain sum, and by his will he gave all his property to his executors, to divide in such ways as they should think right. The wife survived, and the executors having died or renounced, the estate became divisible according to the statute of distribution; and under this the widow's share exceeded the sum covenanted for: it was held, that she was entitled to her distributive share, but not in addition to her provision under the marriage settlement; *Goldsmid* v. *Goldsmid*, 1 Swanst. 211: and 1 Wils. 140. S. C. And in the same case

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(*b*) Contingent interests do not pass by an assignment of all the property to which a person is then entitled or possessed. *Pope* v. *Whitcombe*, 3 Russ. 124.

and securities, upon which the same now are or shall hereafter be laid out and invested, and the interest, dividends, and annual produce thereof; *And* all the right, title, interest, possibility, profit, claim, and demand whatsoever, both at law and in equity, of her the said [*lady*], in, to, out of, or upon the said residuary estate and effects, and other the premises hereby assigned, or intended so to be, and every of them, and every part thereof respectively, To HAVE, HOLD, RECEIVE, AND TAKE the said residuary estate, effects, stocks, funds, and securities, and interest, dividends, and annual produce hereby assigned, or intended so to be, (subject and without prejudice to the trusts and bequests contained in the said recited wills of the said [Y. Y.] and [L. L.] respectively, in favour or for the benefit of the said [C. Y.], [W. L.], and the said [*brother*], and his child or children, and the said [E. R.] respectively,) unto the said [*trustees*], their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared

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Habendum, subject to the trusts of their respective wills,

upon the trusts hereinafter mentioned.

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it was also decided, in conformity with prior decisions, that in the case of an absolute intestacy, the distributive share of a widow is considered as a satisfaction of a covenant by the husband, that she should receive a fixed sum at his death, if the share is equal to such sum. And see *Blandy* v. *Wydmore*, 1 P. W. 324; 2 Vern. 709. *Lee* v. *D'Aranda*, 1 Ves. 1. *Barrett* v. *Beckford*, 1 Ves. 519. *Garthshore* v. *Chalie*, 10 Ves. 1.

So also where in a marriage settlement the father of the wife covenanted for payment of a certain sum "in case there shall be a child or children of the marriage living at her decease, or the youngest attaining twenty-one, or if they should have attained that age in her life-time, then at her death;" it was held, that the words of the covenant clearly made the payment depend on the event of the children surviving the mother, and that it was not controuled by subsequent directions that the money should not be raised in the events of default of issue, or if issue, of their death under twenty-one without leaving issue, and the death of such issue; nor was it left so ambiguous as to the period or contingency at which the shares should vest, as to induce the court to extend the construction of the covenant in favour of vesting, (as to which see *ante*, p. 417). *Fitzgerald* v. *Field*, 1 Russ. 430.

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concerning the same, *And* the said [*gentleman*] and [*lady*] do, and each of them doth hereby irrevocably make, nominate and appoint and in their and each of their place and stead, put the said [*trustees*] and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, to be the true and lawful attorney and attornies of the said [*gentleman*], and [*lady*] and each of them, to ask, demand, sue for, recover, and receive of and from all and every person or persons, who are, is, shall, or may be liable to pay or transfer the same, the said residuary estate and effects, stocks, funds, and securities, interest, dividends, and annual produce hereby assigned, or intended so to be, and every of them, and every part thereof; and on the payment or transfer thereof, or of any part thereof respectively, to give, sign, and execute acquittances, releases, and other discharges for the same respectively, and on nonpayment or nontransfer thereof, or of any part thereof respectively, to use such ways and means by action or suit, or by any other proceeding or proceedings at law or in equity, as they or he shall think proper, and for all or any of the purposes aforesaid, to appoint or employ one or more persons or person as attornies or attorney to them, him, or her; *And* in all the acts, deeds, matters, and things hereinbefore mentioned, to use the name of the said [*gentleman*] and [*lady*], or either of them, and generally, to do, execute, and perform all acts, deeds, matters, or things whatsoever, which they the said [*gentleman*] and [*lady*], or either of them, might or could have done in their, his, or her own proper person or persons in case these presents had not been executed; *And* whatever the said [*trustees*] and the survivors or survivor of them, and the executors, administrators, and assigns of such survivor, shall lawfully do or cause to be done in or about the premises, the said [*lady*] and [*gentleman*] do hereby jointly for themselves, their heirs, executors, and administrators, and each of them doth hereby respectively for himself and herself, and his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, to allow, ratify, and confirm: AND it is hereby agreed and declared between and by the parties to these presents, that the said [*trustees*], their

Appointment of gentleman and lady of trustees to be their attornies to demand and receive the sums assigned,

with power to give receipts for the same;

and do all necessary acts for the recovery thereof.

Agreement that trustees shall stand possessed

executors, administrators, and assigns, shall stand and be possessed of and interested in the said residuary estate and effects, stocks, funds, and securities, interest, dividends, and annual produce hereby assigned, or intended so to be, *In trust* for the said [*lady*], her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; *And* from and after the solemnization thereof, *Upon trust* that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, or assigns of such survivor, do and shall, either continue the said residuary estate and effects, when and as the same or any part thereof respectively shall from time to time come into their or his hands or possession, in their respective actual state of investment, or call in and convert the same into money, and lay out the money arising therefrom in their or his names or name in the parliamentary stocks or public funds of Great Britain, or upon government or real securities in England or Wales, and shall and may from time to time transfer, alter, and vary the same for or into other stocks, funds, and securities of the like nature, when and as often as they or he shall think proper; And it is hereby agreed and declared that every such calling in, sale, alteration, variation, or transfer of such of the said trust monies and premises, as the said [*lady*] is entitled to under or by virtue of the will of the said [Y. Y.] shall be made with the consent in writing of the said [*lady*] during her life, and after her decease, at the discretion and of the proper authority of the said [*trustees*], or the survivors or survivor of them, and the executors, administrators, and assigns of such survivor; *And* that every such calling in, sale, alteration, variation, or transfer of such of the trust monies and premises as the said [*lady*] is entitled to, under or by virtue of the will of the said [L. L.] shall be made with the consent in writing of the said [*gentleman*] and [*lady*] during their joint lives, and of the survivor of them, during his or her life; *And* after the decease of such survivor, at the discretion and of the proper authority of the said trustees or trustee for the time being; *And* as to the trust monies and premises to which the said [*lady*] is so entitled as aforesaid, under or by virtue of the said will of the said [Y. Y.], and the stocks, funds, and securities in which the same shall or may from time

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of trust-monies, In trust for lady until marriage, and afterwards upon trust to continue the same upon actual investment, or vary the same;

such variation, if of monies of Y. Y., to be made with consent of lady during her life,

and after her decease, of trustees;

and such variation, if of monies of L. L., to be made with consent of gentleman and lady, and the survivor;

and after the decease of survivor, at the discretion of trustees,

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Declaration that trustees shall stand possessed of monies to which the lady is entitled under the will of Y. Y.

to time be vested, under or by virtue of the same will, or these presents, and the interest, dividends, and annual produce thereof, (which same trust monies, stocks, funds, and securities, are hereinafter called the firstly settled trust monies, stocks, funds, and securities,) It is hereby agreed and declared between and by the parties to these presents, that the said trustees or trustee for the time being shall stand and be posssesed thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same (that is to say); *Upon trust* that the said trustees and trustee for the time being do and shall, during the joint lives of the said [*gentleman*] and [*lady*], pay, apply, and dispose of the interest, dividends, and annual produce of the said firstly settled trust monies, stocks, funds, and securities, to such person and persons only, &c. (*to the separate use of lady, see ante, p.* 514, 515); and if the said [*lady*] shall survive the said [*gentleman*], then from and immediately after the decease of the said [*gentleman*], *Upon trust* that the said trustees or trustee for the time being, do and shall pay and apply the interest, dividends, and annual produce of the said firstly hereby settled trust monies, stocks, funds, and securities, to, or permit the same to be received by the said [*lady*] and her assigns, during her life; *And* after the decease of the said [*lady*], the said firstly settled trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, shall remain and be *In trust*, for all and every, or one or more, exclusive of the other or others of the children or child of the said [*lady*], by the said [*gentleman*], her said intended husband, with such provisions for their respective maintenance, education, or advancement, and at such time or respective times, and if more than one, in such shares, and upon such terms, and in such manner, for the benefit of the children, or some or one of them, as the said [*lady*], whether covert or sole, by any deed or writings, or deeds or writings, with or without power of revocation, to be by her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or by any writing in the nature of a will, or by

Upon trust, during joint lives of gentleman and lady, to pay dividends for separate use of lady;

and if she should survive gentleman, to permit her to receive the same for her life, and after her decease,

the trust-monies shall be in trust for such children of the marriage, and in such manner as lady shall appoint;

any codicil thereto, to be by her signed and published in the presence of the like number of witnesses, shall, from time to time direct or appoint; and so far as any such direction or appointment, if incomplete, shall not extend, *In trust* for all and every of the children and child of the said [*lady*], by the said [*gentleman*], who, being a son or sons, shall attain the age of twenty-one years, and who, being a daughter or daughters. shall attain that age, or marry under that age with the consent of her or their parent or parents, guardian or guardians, for the time being, and shall be divided between and among the said children, if more than one, in equal shares, as tenants in common; *And* if there shall be but one such child, then the whole shall be *In trust* for that one or only child; but no child taking under any appointment made in exercise of the aforesaid power, shall be entitled to any share of the firstly hereby settled trust monies, stocks, funds, and securities, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly; *And* after the decease of the said [*lady*], and until the whole of the firstly hereby settled trust monies, stocks, funds, and securities, shall become vested in such children or child as aforesaid, the said trustees and trustee for the time being do and shall pay and apply the whole, or a competent part of the interest, dividends, and annual produce of the same, or so much or such part thereof as shall not for the time being have become vested, unto and for the benefit of all and every the child or children for the time being entitled thereto in expectancy, for or towards his, her, or their maintenance or education; *And* if there shall be no child of the said [*lady*], by the said [*gentleman*], who shall for the time being become entitled to the firstly hereby settled trust monies, stocks, funds, and securities, under the trusts hereinbefore declared concerning the same, *Then* after the decease of the said [*lady*], and failure of issue as aforesaid, the said firstly hereby settled trust monies, stocks, funds and securities, and the interest, dividends, and annual produce thereof, shall remain and be as follows (that is to say); if the said [*lady*] shall survive the said [*gentleman*], then *In trust* for the executors, administrators, and assigns of the said [*lady*], as part of her

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and in default of appointment, In trust for all the children who, being a son, shall attain twenty-one, or being a daughter, shall attain that age or marry, equally;

and if but one, the whole to that one,

but subject to hotchpot;

and after decease of lady, trustees shall apply interest of children's share towards their maintenance;

and if there shall be no issue of the marriage, trust-monies shall be, if lady shall survive gentleman,

in trust for lady absolutely;

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personal estate; but if the said [*gentleman*] should survive the said [*lady*], upon such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*lady*], by any deed or writing by her sealed and delivered, in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or by any writing in the nature of a will, or by any codicil thereto, to be by her signed and published, in the presence of and attested by a like number of credible witnesses, shall appoint; and in default of such appointment, and so far as any such appointment, if incomplete, shall not extend, *In trust* for the person or persons who, under the statute made for the distribution of the estates of intestates, would then be entitled to the personal estate of said [*lady*], in case she, having survived the said [*gentleman*] possessed of the same, had died intestate, and to be divided between or amongst the same persons respectively, if more than one, in the shares and proportions in which the same respectively would, under or by virtue of the said statute, be divisible among the same persons respectively: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said trustees or trustee for the time being, during the life of the said [*lady*], with her consent in writing, and after her decease, at their or his discretion, to raise or apply all or any part of the share of any child in the said firstly hereby settled trust monies, stocks, funds and securities, under the trusts aforesaid, for or towards his or her preferment, advancement, or benefit, notwithstanding such share shall not have become vested or payable under the trusts and provisions hereinbefore declared and contained: AND it is hereby agreed and declared between and by the parties to these presents, that after the decease of the said [*lady*], the said trustees or trustee for the time being do and shall in the mean time, and until the firstly hereby settled trust monies, stocks, funds, or securities, shall vest absolutely in some person or persons, under the trusts hereinbefore declared concerning the same, receive the interest, dividends, and annual produce of the same, or such part or parts thereof as shall be

but if gentleman should survive lady, as lady should by deed or will appoint;

and in default of appointment, In trust for her next of kin.

Provision for advancement of children out of firstly settled monies.

Accumulation clause for firstly settled monies;

unapplied or undisposed of, under or by virtue of the trusts and provisions hereinbefore declared and contained, and lay out and invest the same in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales; and do and shall receive the interest, dividends, and annual produce of the stocks, funds, and securities, of which the interest, dividends, and annual produce to be so laid out and invested as aforesaid, shall for the time being consist, and lay out and invest the same in their or his names or name in any of the stocks, funds, and securities hereinbefore mentioned, so that the same and all the resulting income and produce thereof may, during such suspense of vesting as aforesaid, accumulate in the way of compound interest; and do and shall from time to time alter and vary the said interest, dividends, and annual produce, and the accumulations thereof, for or into other stocks, funds, and securities of a like nature, at their or his discretion; AND it is hereby agreed and declared, that the said interest, dividends, and annual produce, so to be laid out and invested as aforesaid, and the accumulations thereof, shall be added to the funds from which the same shall have proceeded, and be considered as part thereof, and be held upon the like trusts; *And* as to the said trust monies and premises to which the said [*lady*] is so entitled as aforesaid, under or by virtue of the will of the said [L. L.], and the stocks, funds, and securities in which the same shall from time to time be invested, under or by virtue of the same will or these presents, and the interest, dividends, and annual produce thereof, (which same trust-monies and securities, stocks, funds, and securities, are hereinafter called the secondly hereby settled trust monies, stocks, funds, and securities,) *It* is hereby agreed and declared between and by the parties hereto, that the said trustees or trustee for the time being shall stand and be possessed thereof, upon and for the trusts, intents, and purposes, and with under and subject to the powers, provisoes, agreements, and declarations hereinafter declared and expressed of and concerning the same (that is to say); *Upon trust*, that the said trustees or trustee for the time being do and shall

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and as to the monies to which the lady is entitled under the will of L. L. declaration that the trustees shall stand possessed thereof upon the trusts hereinafter mentioned (that is to say);

upon trust to pay the interest to gentleman

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pay the interest, dividends and annual produce of the said secondly hereby settled trust monies and interest, or permit the same to be received by the said [*gentleman*] and his assigns during his life, and after his decease to or by the said [*lady*] and her assigns during her life, and after the decease of the survivor of them, the said [*gentleman*] and [*lady*], the said secondly hereby settled trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, shall remain and be upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, in favour or for the benefit of the said child or children of the said [*lady*] by the said [*gentleman*], as are hereinbefore expressed and declared, in favour or for the benefit of such child or children respectively, of and concerning the said firstly hereby settled trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or as near thereto as the deaths of parties and circumstances will then admit of: PROVIDED NEVERTHELESS, that any child of the said [*lady*] by the said [*gentleman*] may, during the joint lives of the said [*gentleman*] and [*lady*], and the life of the survivor of them, be, with the consent in writing of the said [*gentleman*] and [*lady*], or the survivor of them, advanced out of the expectant share of such child in the secondly hereby settled trust monies, stocks, funds, and securities, any thing hereinbefore expressed or to be inferred to the contrary notwithstanding: *And* if there shall be no child of the said [*lady*], by the said [*gentleman*], who shall become entitled to the said secondly hereby settled trust monies, stocks, funds, and securities, under the trusts hereinbefore declared concerning the same, and to any accumulation that may have been made of the interest, dividends, and annual produce under the trusts aforesaid, *Then* after the decease of the survivor of them the said [*gentleman*] and [*lady*], and failure of such issue, as aforesaid, the said secondly hereby settled trust monies, and any accumulations that may have arisen as last aforesaid, and the interest, dividends, and annual produce thereof, shall remain and be, *In trust* for the said [Cath. Y.], her executors, ad-

for his life; and after his decease to the lady; and after the decease of the survivor, the said last-mentioned trust monies shall be upon the same trusts, for the benefit of the children of the marriage, as are declared concerning the firstly settled monies.

Proviso that children may be also advanced out of secondly settled monies;

and if there shall be no child who shall become entitled,

the secondly settled monies shall be in trust for daughter of lady by first marriage absolutely;

ministrators, and assigns, for her and their own absolute use and benefit; *But* if the said [Cath. Y.], shall depart this life under the age of twenty-one years, without being or having been married, *Then* after her decease, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, as are hereinbefore expressed and declared of and concerning the said firstly hereby settled trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, after the decease of the said [*lady*], and on failure of her issue by the said [*gentleman*], or as near thereto as the deaths of parties, or the then existing circumstances, will admit of. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that it shall and may be lawful for the said trustees and trustee for the time being, at any time, during the life of the said [*lady*], at her request in writing, as to the said firstly hereby settled trust monies, stocks, funds, and securities, and at any time or times during the lives and life of the said [*gentleman*] and [*lady*], or the survivor of them, at their, his, or her request in writing, as to the said secondly hereby settled trust monies, stocks, funds, or securities, to convert into money the whole or any part of the respective trust monies, stocks, funds, and securities, and to lay out the money arising thereby in the purchase of any freehold or copyhold messuages, lands, or hereditaments, in England or Wales, of an estate of inheritance in fee-simple, to be conveyed to the said trustees or trustee, for the time being, their or his heirs or assigns; *Upon trust* nevertheless, with the consent and approbation, in writing, of the person or persons, whose request is hereby made necessary for the making of any such purchase as aforesaid, and after the decease of such person or persons, then at the discretion, and of the proper authority of the said trustees or trustee for the time being, to sell and dispose of the said messuages, lands, and hereditaments, which shall have been so purchased as aforesaid, either by public sale or private contract, and in such manner as shall be deemed most convenient, and at the best price or prices that can at the time of such sale be reason-

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but if she shall die under twenty-one, and without issue, upon such trusts as are declared of firstly settled monies.

Power to trustees as to firstly settled monies,

at the request of lady, and as to the secondly settled monies, at request of gentleman and lady, or survivor, to convert and reconvert.

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ably had or gotten for the same, unto such person or persons as shall be willing to become the purchaser or purchasers thereof, and upon trust to apply the monies arising from such sale, (after payment of the costs, charges, and expenses attendant upon the same,) upon and for such and the same trusts, intents, and purposes, as the money so raised and laid out in the purchase of the said messuages, lands, and other hereditaments, was subject to before such purchase was made, or would have been subject to if the same had not been laid out therein; *And* do and shall from time to time until such sale, make such leases of the said lands and hereditaments, at full and improved rents, for any term or number of years, not exceeding fourteen years, as to the said trustees or trustee for the time being, shall seem fit; and upon trust in the mean time, and until such messuages, lands, and hereditaments, shall be resold, to apply the rents and profits thereof, in such manner as the interest, dividends, and annual produce of the money laid out in the purchase thereof would have been applicable, under the trusts hereinbefore declared, in case such purchase had not been made; It being hereby agreed and declared, that the said messuages, lands, and hereditaments, so to be purchased by the said trustees or trustee for the time being, under this present power as aforesaid, shall, when so purchased, be considered as money, and be subject to such and the same trusts in all respects as the money laid out in the purchase thereof was subject to before such purchase was made, or would have been subject to if the same had not been laid out therein:

Third witnessing part, whereby gentleman and lady jointly covenant with trustees, that if any real estate shall be given or come to lady or gentleman in her right, they will do all necessary acts for conveying it,

AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, the said [*gentleman*] and [*lady*] do hereby jointly for themselves, their heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*trustees*], their executors and administrators, that if at any time after the solemnization of the said intended marriage, during the life of the said [*lady*], any real estate shall be given, or devised, or come or descend to, or devolve upon the said [*lady*], or the said [*gentleman*] in her right, the said [*gentleman*] and [*lady*] respectively, and their respective heirs, executors, and administrators, shall and will, at the expense of

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the said [*lady*], her heirs, executors, and administrators, make, do, and execute, or cause and procure to be made, done, and executed, all such acts, deeds, conveyances, and assurances in the law whatsoever, as the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, shall think necessary and proper, for effectually conveying and assuring such real estate to the uses and in the manner following (that is to say); *To the use* of the said [*lady*], and her assigns, for her life, without impeachment of waste, with a limitation, *To the use* of the said [*trustees*], their heirs and assigns, during the life of the said [*lady*], *In trust* for her, and to preserve the contingent remainders, *And* after the decease of the said [*lady*], *To the use* of all and every, or such one or more exclusively of the other or others of the children or child of the said [*lady*] by her said late husband [Y. Y.], and by the said [*gentleman*], her said intended husband, or either of them, for such estate or estates, in such shares, upon such terms, and in such manner, for the benefit of the said children, or some or one of them, as the said [*lady*], whether covert or sole, shall by deed or will appoint; *And* in default of such appointment, *To the use* of all and every the children or child of the said [*lady*] by her said late husband, and her said intended husband, as tenants in common in tail, with cross remainders between or amongst them in tail; *And* if but one such child, *To the use* of such only child in tail; *And* in default of such issue, *To such uses*, for such estates, and in such manner, as the said [*lady*] shall at any time, during the joint lives of herself and the said [*gentleman*], notwithstanding her said intended coverture, by deed or will appoint; *And* in default of such appointment, *To the use* of the said [*lady*], her heirs and assigns for ever; *And* in every such settlement to be made of the said real estate, power shall be given to the said [*lady*] during her life, and after her decease, to the said [*trustees*], and the survivors or survivor of them, and the executors and administrators of such survivor, during the minority of any tenant in tail in possession, to appoint such real estate, or the share to which such tenant in tail shall be entitled, or any part thereof, for any term of years

To the use of lady for life;

remainder to the use of trustees to preserve;

remainder to the use of all the children of the lady by her late and her intended husband, in such manner as she should appoint,

and in default thereof, To the use of all the children equally;

remainder to such uses as lady shall appoint; and in default of appointment,

to lady in fee;

and that power shall be contained in settlement for lady, and for trustees, to lease for twenty-one years;

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not exceeding twenty-one years in possession, for the best rent that can be reasonably had for the same, without taking any fine for the making thereof, and under the usual restrictions; *And also* a power enabling the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, at the request in writing of the said [*lady*], to limit and appoint any part or parts of the estate to be comprised in such settlement, to any person or persons whomsoever, by way of sale, or in exchange for other hereditaments, situate in England or Wales, and for that purpose to revoke the uses thereby to be limited, and to appoint such other uses as the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, shall think proper, with the usual clauses enabling the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, to give receipts and discharges to any person purchasing any part of the said estates, or paying any money for equality of exchange; *And* with a direction to the [*trustees*], and the survivors or survivor of such of them, and the executors and administrators of such survivor, to lay out the money received by them or him, on any such sale or exchange, in the purchase of other estates in England or Wales, and to settle the estates so to be purchased, or which shall be received by them or him, to the subsisting uses of the settlement; *And* until a purchase can be found, to lay out the money so to be received by them or him, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or upon government or real securities in England or Wales, with power to vary the same securities, as occasion may require, and with a direction to pay the interest, dividends, and annual produce thereof, to the person or persons who would for the time being have been entitled to the rents of the estates so sold or exchanged, if the same had not been sold or exchanged: And it is hereby further agreed and declared, that in any settlement so to be made of any estate as aforesaid, shall be inserted such provisions for the appointment of new trustees, and for the indemnity and reimbursement of the trustees, and such further powers and provisions for better explaining and

and power of sale and exchange,

and all other usual and necessary clauses.

effecting the meaning and object of the parties, (but not inconsistent with the general scope of these presents,) as by the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, shall be reasonably advised, devised, and required: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations hereinbefore mentioned, *They* the said [*gentleman*] and [*lady*] his intended wife, do hereby jointly for themselves, their heirs, executors, and administrators, and each of them doth hereby separately for himself and herself, and his and her heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors and administrators, that if at any time after the solemnization of the said intended marriage, and during the life of the said [*lady*], any monies or personal estate shall be given, or bequeathed, or come to, or devolve upon the said [*lady*], or the said [*gentleman*] in her right, *Then*, and so often as the same shall happen, they the said [*gentleman*] and [*lady*] respectively, and their respective executors and administrators, shall and will, at the expense of the said [*lady*], her executors and administrators, make, do, and execute, or cause and procure to be made, done, and executed, all such acts, deeds, assignments, and assurances in the law whatsoever, as the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, and assigns of such survivor, or their or his counsel in the law, shall think necessary or proper, for effectually vesting such monies, or other personal estate, in the said [*trustees*], or the survivors and survivor of them, and the executors, administrators, or assigns of such survivor, *Upon* the trusts, and in the manner following, or as near thereto as the circumstances of the case will admit of, (that is to say); *In trust* for the separate use of the said [*lady*] during the joint lives of her and the said [*gentleman*], without being subject to the debts or interference of the said [*gentleman*], and after the decease of the said [*gentleman*], *In trust* for the said [*lady*] and her assigns during her life; and after the decease of the said [*lady*], *In trust* for all

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Fourth witnessing part, whereby gentleman and lady covenant with trustees, that if any personal property shall be given or come to the lady during the marriage, gentleman and lady will do all necessary acts to vest the same in trustees,

In trust for separate use of lady, and after her decease,

In trust for the

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children of the lady by her former and her intended husband, in such manner as she should appoint;

and in default of appointment, In trust for all the children of lady equally,

and every, or one or more exclusively of the other or others of the said children or child of the said [*lady*] by her said late husband, [Y. Y.], and by the said [*gentleman*], her said intended husband, or either of them, with such provisions for their respective maintenance, education, or advancement, at such time or times, and if more than one, in such shares, and upon such terms, and in such manner, for the benefit of the said children, or some or one of them, as the said [*lady*], whether covert or sole, shall by deed or will appoint; and in default of such appointment, in trust for all and every the children and child of the said [*lady*], by her said late husband and her said intended husband, who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age, or marry under that age, with the consent of her or their parent or parents, guardian or guardians for the time being, to be divided between or amongst them, if more than one, in equal shares; and if there should be but one such child, *In trust* for that one child; and if there shall be no child, to become entitled as aforesaid to the said monies or other personal estate, then after the decease of the said [*lady*], and failure of such issue as aforesaid, the said monies and other personal estate, and the dividends and interest thereof, shall remain and be upon and for such and the same trusts and purposes as are hereinbefore expressed and declared of and concerning the said firstly hereby settled trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, after the decease of the said [*lady*], and failure of her issue by the said [*gentleman*], or as near thereto as the deaths of parties and other circumstances will then admit of; AND it is hereby agreed and declared between and by the parties hereto, that in every settlement to be made of such monies or other personal estate as aforesaid, shall be inserted such provisions for the maintenance, education, and advancement of the children, and such provisions for changing the securities, and laying out the trust monies in the purchase of real estates, and for making such real estates of the nature of personalty, and for the appointment of new trustees, and for the indemnity of the trustees, and such further and other powers and

and if no child,

upon trusts hereinbefore declared respecting firstly settled monies.

Agreement that all usual and necessary clauses shall be inserted in settlement.

provisions for better explaining and effectuating the objects of the parties, (not inconsistent with the general scope of these presents,) as by the said [*trustees*], and the survivors and survivor of them, or their or his counsel in the law, shall be reasonably advised, devised, and required. (*a*) AND she the said [*lady*] doth hereby for herself, her heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their heirs and assigns, in manner following,(that is to say); that for and notwithstanding any act, deed, matter, or thing whatsoever, by her the said [*lady*] made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, she the said [*lady*] now hath in herself good right, full power, and lawful and absolute authority, to grant and convey the said messuages or tenements, lands, hereditaments, and premises, hereby granted or released, or intended so to be, with the appurtenances, unto the said [*trustees*], their heirs and assigns, during the life of the said [*lady*], to the uses and in manner aforesaid, and according to the true intent and meaning of these presents: *And that* the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, shall and may from time to time, and at all times hereafter, during the life of the said [*lady*], remain, continue, and be (but subject to the life estate of the said [W. L.] therein), *To the uses*, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore declared of and concerning the same (subject as aforesaid), and be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, received and taken accordingly, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by her the said [*lady*], or her heirs, or of, from, or by any person or persons whomsoever, lawfully or equitably claiming, or to claim by, from, or under, or in trust for her, them, or any of them; *And* that free and clear, and freely and clearly, and absolutely

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Covenant by lady with trustees, that she hath good right to convey the estate for life in remainder;

and that the hereditaments may be quietly enjoyed.

free from incumbrances;

(*a*) For clauses and limitations of a similar nature, see *ante*, p. 369, and the forms of Marriage Articles throughout.

Other forms.

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acquitted, exonerated, released, and for ever discharged, or otherwise by the said [*lady*], her heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights or titles of or to dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered by the said [*lady*], or her heirs, or any other person or persons lawfully or equitably claiming, or to claim by, from, under, or in trust for her, them, or any of them, or by her or their acts, means, defaults or procurements, (except the said estate for life of the said [W. L.]); *And further*, that she the said [*lady*], her heirs, and all and every other person or persons having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for her the said [*lady*], or her heirs, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose by the said [*trustees*], their heirs and assigns, but at the proper costs and charges of the said trust premises, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, or assuring of the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and every

and for further assurance.

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part thereof, with their appurtenances, unto the said [*trustees*], their heirs and assigns, during the life of the said [*lady*], to the uses and in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*trustees*], their heirs or assigns, or their or either of their counsel in the law, shall be reasonably devised, advised, and required, so as no such further or other assurance or assurances contain or imply any further or other covenant or warranty, than against the person or persons who shall be required to make or execute the same, and his or their heirs, executors, or administrators' acts and deeds, and so as the party or parties who shall be required to make such further assurance or assurances, be not compelled nor compellable, for the making thereof, to go or travel from his, her, or their ususal place or respective places of abode. (*Provisions that trustees' receipts shall be sufficient discharges, for the appointment of new trustees by gentleman and lady during joint lives; and the survivor of them, and after the decease of the survivor, by surviving trustees, and provisions for their indemnity and reimbursement, as ante*, p. 511, 512). IN WITNESS, &c.

ERRATA ET ADDENDA.

Page 77, line 13, for "*defendant*," read "*demandant*."
Page 106, line 11, for "*reserve*," read "*preserve*."

Page 78. It should be mentioned, that the 39 & 40 Geo. III. c. 56. has been repealed by the 7 Geo. IV. c. 45. which re-enacts the provisions contained in the prior act, and provides for other cases not within that act.

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